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federal register

Friday
January 29, 1982

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4223 **Environmental Safeguards for Animal Damage Control on Federal Lands** Executive order

4225 **Designation of Certain Officers To Act as Secretary of State** Executive order

4256 **Mortgages** VA increases maximum interest rate on guaranteed, insured and direct loans for homes and condominiums.

4474 **Rent Subsidies** HUD/FHC publishes Annual Adjustment Factors for rent adjustments under Section 8 Housing Assistance Payments Programs. (Part V of this issue)

4230 **Banks, Banking—Emergency Financial Assistance** FRS includes additional counties in California in temporary suspension of Regulation Q penalty for early withdrawal of time deposits.

4329 **Grant Programs—Education** ED invites applicants for fiscal year 1982 grants under the National Diffusion Network Program.

4254 **Cuban Imports** Treasury/FACO reduces certificate of origin requirements for regulated imports.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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4385 **Imports—Restricted Materials** Treasury/FACO publishes detention and disposition procedures for unlicensed publications of Vietnamese, North Korean, Cambodian or Cuban origin.

4406 **Medical Devices** HHS/FDA proposes general classification rules for all radiology devices. (Part II of this issue)

4311 **Radiation Protection** NRC proposes to permit longer intervals between required calibrations of certain dosimetry systems.

4310 **Nuclear Power Plants and Reactors** NRC considers requiring a separate operating license hearing for each power reactor unit at a nuclear plant site.

4232 **Electric Power** DOE/FERC exempts two categories of small hydroelectric power projects from licensing requirements.

4406 **Waste Treatment and Disposal** EPA announces availability of and requests comments on revised National Pollutant Discharge Elimination System Treatability Manual.

4321 **Radio** FCC terminates proceeding to widen the range of uses for FM multiplex channels of public broadcasting stations.

4258 **Veteran Employment** Labor/FCCPO suspends contract provisions requiring quarterly reports of hiring actions on disabled veterans and veterans of the Vietnam era.

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Presidential Documents

Title 3—

The President

Executive Order 12342 of January 27, 1982

Environmental Safeguards for Animal Damage Control on Federal Lands

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to permit effective predator control with environmental safeguards under Federal statutory programs, Executive Order No. 11643, as amended, is hereby revoked.

Ronald Reagan

THE WHITE HOUSE,
January 27, 1982.

[FR Doc. 82-2607
Filed 1-28-82; 11:33 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12343 of January 27, 1982

Designation of Certain Officers To Act as Secretary of State

By the authority vested in me as President of the United States of America by Section 3347 of Title 5 and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. During any period when, by reason of absence, disability, or vacancy in office, neither the Secretary of State nor the Deputy Secretary of State, is available to exercise the powers or perform the duties of the Office of the Secretary, an officer from the Department of State who has been appointed by the President, by and with the advice and consent of the Senate, in such order as the Secretary of State may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, then such officers shall act as Secretary in descending order of rank, as established by the listing of their offices in Sections 5314 or 5315 of Title 5 of the United States Code, and at each level of the Executive Schedule in the order in which they shall have taken the oath as such officers.

Sec. 2. The President may at any time, pursuant to law but without regard to the foregoing provisions of this Order, direct that an officer specified by the President shall act as Secretary of State.

Sec. 3. Executive Order No. 10839 is revoked.

Ronald Reagan

THE WHITE HOUSE,
January 27, 1982.

[FR Doc. 82-2608
Filed 1-28-82; 11:34 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 6

Exceptions From the Competitive Service; Agriculture Department

AGENCY: Office of Personnel Management.

ACTION: Final rule; technical amendment.

SUMMARY: Executive Order 12300 of March 23, 1981 (46 FR 18683), excepted from the competitive service certain positions in the Department of Agriculture because of their confidential, policy-determining, policy-making, or policy-advocating character. This technical amendment codifies the exception into Section 6.8 of Title 5 of the Code of Federal Regulations.

EFFECTIVE DATE: March 23, 1981.

FOR FURTHER INFORMATION CONTACT:
Beverly McCain Jones, (202) 254–5966.
Office of Personnel Management.
Donald J. Devine,
Director.

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE (RULE VI)

Accordingly, OPM amends 5 CFR 6.8 by adding paragraph (c) to read as follows:

§ 6.8 Specified exceptions.

* * * * *

(c) Within the Department of Agriculture, positions in the Agriculture Stabilization and Conservation Service the incumbents of which serve as State Executive Directors and positions in the Farmers Home Administration the incumbents of which serve as State Directors or State Directors-at-Large shall be listed in Schedule C for all grades of the General Schedule.

(E.O. 12300)

[FR Doc. 82-2333 Filed 1-28-82; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 344; Lemon Reg. 343, Amdt.1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period January 31–February 6, 1982, and increases the quantity of lemons that may be shipped during the period January 24–30, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation becomes effective January 31, 1982, and the amendment is effective for the period January 24–30, 1982.

FOR FURTHER INFORMATION CONTACT:
William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The committee met again publicly on January 26, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is slightly improved.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

PART 910—LEMONS GROWN IN ARIZONA AND CALIFORNIA

1. Section 910.644 is added as follows:

§ 910.644 Lemon Regulation 344.

The quantity of lemons grown in California and Arizona which may be handled during the period January 31, 1982, through February 6, 1982 is established at 210,000 cartons.

2. Section 910. 643 Lemon Regulation 343 (47 FR 3082) is revised to read as follows:

§ 910.643 Lemon Regulation 343.

The quantity of lemons grown in California and Arizona which may be handled during the period January 24, 1982, through January 30, 1982, is established at 220,000 cartons.

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

Dated: January 28, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-2609 Filed 11-28-82; 11:44 am]

BILLING CODE 3410-02-M

7 CFR Part 1098

[Milk Order 98; Docket No. AO-184-A43]

Milk in the Nashville, Tennessee, Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the pool plant definition of the Nashville, Tennessee, order. The order now provides that a distributing plant must dispose of at least 50 percent of its milk receipts in packaged fluid milk products distributed on routes in order to qualify as a pool plant. Under the change bulk sales of Class I milk to other plants would be included in computing whether the plant qualifies as a pool plant.

This change was one of several proposed changes considered at a public hearing held October 21–23, 1981. The action is necessary to reflect current marketing conditions and to insure orderly marketing in the regulated area. Marketing conditions are such that prompt amendatory action is required. For this reason, a recommended decision and an opportunity to file exceptions thereto have been omitted. A separate recommended decision will deal with the remaining issues in this proceeding.

EFFECTIVE DATE: February 1, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 (202/447-5443).

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

This action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued September 4, 1981; published September 11, 1981 (46 FR 45354).

Correction: Published September 22, 1981 (46 FR 46813).

Notice of Rescheduled Hearing: Issued September 24, 1981; published September 29, 1981 (46 FR 47588).

Suspension of Rule: Issued November 24, 1981; published November 30, 1981 (46 FR 58064).

Partial Final Decision: Issued January 15, 1982; published January 21, 1982.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* 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), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Nashville, Tennessee, marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than February 1, 1982. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued January 15, 1982. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1982, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Nashville, Tennessee, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA; ORDER AMENDING ORDER

Paragraph (a) of § 1098.7 is revised to read as follows:

§ 1098.7 Pool plant.

* * * * *

(a) A distributing plant that has Class I disposition during the month of not less than 50 percent of the fluid milk products, except filled milk, approved

by a duly constituted regulatory agency for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1098.13 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of its total disposition of fluid milk products, except filled milk, during the month.

* * * * *

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

Effective date: February 1, 1982.

Signed at Washington, D.C., on January 26, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-2334 Filed 1-28-82; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Revision of REA Specification T-9

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby provides for the revision of REA Specification T-9, "REA Specification—Single Pole Steel Structures Complete with Arms." The revision will update and bring into conformance with national standards the original Specification T-9, dated December 1971.

EFFECTIVE DATE: January 25, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Belfore, telephone (202) 382-9086. A Final Impact Statement has been prepared and is available from the Director, Engineering Standards Division, Rural Electrification Administration, Room 1270-S, U.S. Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby provides for the revision of REA Specification T-9, "REA Specification—Single Pole Steel Structures Complete with Arms." This final action has been issued in conformance with Executive Order 12291, Federal Regulation. Since no significant effect on the economy will occur; since no significant increase in costs for consumers, industries or Government will result; and since no significant impact on economic conditions will be caused, this action has been determined to be "not major."

The Regulatory Flexibility Act (Pub. L. 96-354) does not apply to this action, therefore, a Regulatory Flexibility Analysis has not been prepared.

This final action will include reference to NEMA Publication No. TT-1, "Tapered Tubular Steel Structures," which had not been developed when the original specification was published in 1971.

A Notice of Proposed Rulemaking was published in the **Federal Register** on October 2, 1981, Volume 46, Number 191, Page 48692. However, no public comments were received in response to the notice.

All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: January 25, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-2387 Filed 1-28-82; 8:45 am]

BILLING CODE 3410-15-M

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7 CFR Part 1701

Public Information; Appendix A—REA Bulletins Specification for Electronic Equipment Housings, PE-69

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby issues a File With to REA Bulletin 345-79, Specification for Electronic Equipment Housings, PE-69, to further identify the sizes of housings covered by this specification. PE-69 was intended to address only the larger "universal" housings, however, there has been some confusion and attempts to apply this document to housings ranging from single channel carrier to modular buildings. This File With will clarify the intended range of housing sizes to be covered by the specification.

EFFECTIVE DATE: January 25, 1982.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3827. The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends Appendix A by issuing a File With for Bulletin 345-79, Specification for Electronic Equipment Housings, PE-69. This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as not major. A Regulatory Flexibility Analysis is not required and an OMB Circular A-95 review is not applicable to this action.

Some confusion exists as to the applicability of PE-69. In an effort to reduce confusion, and to minimize unnecessary and costly testing, a clarifying addendum is being issued. A total revision was considered undesirable as only this one section required attention. Retaining the bulletin in its present form would have continued the confusion and resulted in unnecessary testing on the part of the private sector.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

A notice of Proposed Rule Making was published in the **Federal Register** on September 25, 1981. No public comments were received in response to the notice.

Dated: January 25, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-2330 Filed 1-28-82; 8:45 am]

BILLING CODE 3410-15-M

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7 CFR Part 1701

Public Information; Appendix A—REA Bulletins; Bulletin 345-13, Specification for Aerial and Underground Telephone Cable, PE-22 and Bulletin 345-70, Specification for Filled Buried Wire, PE-54

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby issues revised pages to Bulletins 345-13 and 345-70, REA Specifications PE-22 and 54 which will allow the optional use of medium density jacketing material.

EFFECTIVE DATE: January 25, 1982.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration,

Room 1342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3827. The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.) REA hereby issues revised pages to Bulletin 345–13, Specification for Aerial and Underground Telephone Cable, PE–22 and Bulletin 345–70, Specification for Filled Buried Wire, PE–54. This action has been reviewed under USDA procedures established to implement Executive Order No. 12291 and has been classified as not major. A Regulatory Flexibility Analysis is not required, and an OMB Circular A–95 review is not applicable to this action.

These revised pages will permit the use of medium density jacketing material, an improvement over existing products, on cables and wires accepted by REA. This will result in improved product performance at no increase in cost, therefore, no other options were seriously considered.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851 Rural Telephone Loans and Loan Guarantees.

A Notice of Proposed Rule Making was published in the **Federal Register** on May 5, 1981. However, no public comments were received in response to the notice.

Dated: January 25, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82–2329 Filed 1–28–82; 8:45 am]

BILLING CODE 3410–15–M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R–0383; Reg. Q]

Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amendment of Board Order temporarily suspending regulation.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms, mud slides, high tides, and flooding in the California counties of Contra Costa, Marin, San Mateo, Santa Cruz, and Sonoma on January 8, 1982. This action expands that Order to include additional counties in California.

EFFECTIVE DATE: January 9, 1982 for Solano County; January 12, 1982 for Humboldt County; and January 15, 1982 for the counties of Alameda, Santa Clara, and San Joaquin.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452–3711).

SUPPLEMENTARY INFORMATION: On January 7, 1982, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the California counties of Contra Costa, Marin, San Mateo, Santa Cruz, and Sonoma, major disaster areas. The Board regarded the President's actions as recognition by the Federal Government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board of Governors, acting through its Secretary, pursuant to delegated authority, suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors suffering property or other financial loss in the disaster areas as a result of severe storms, mud slides, high tides, and flooding beginning on or about December 19, 1981. (47 FR 2857). Subsequent to this action, the Presidential declaration of a major disaster has been amended to include additional counties. The Board therefore believes it appropriate to amend its Order to include the additional counties. The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas as a result of severe storms, mud slides, high tides, and flooding beginning on or about December 19, 1981. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This amendment will be retroactive to January 9, 1982 for Solano County, January 12, 1982 for Humboldt County, and January 15, 1982 for the counties of Alameda, Santa Clara, and San Joaquin and will remain in effect until 12 midnight July 7, 1982.

Pursuant to its authority under section 19(j) of the Federal Reserve Act (12 U.S.C. 371b), the Board has determined it to be in the public interest to suspend the penalty provision in § 217.4(d) of Regulation Q for the benefit of depositors, suffering disaster-related losses within the designated counties of California, which have been officially designated major disaster areas by the President. The Boards in granting this temporary suspension, encourages member banks to permit penalty-free withdrawal before maturity of time deposits for depositors who have suffered disaster-related losses within the designated disaster areas.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the designated counties of California directly affected by the severe storms, mud slides, high tides, and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority (12 CFR 265.2(a)(13)), January 25, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82–2300 Filed 1–28–82; 8:45 am]

BILLING CODE 6210–01–M

12 CFR Part 206

[Docket No. R–0327; Reg. F]

Securities of State Member Banks; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This notice corrects a previous **Federal Register** document (FR Doc. 81–4218) relating to Securities of State Member Banks published at page 11249 in the issue for Friday, February 6, 1981.

FOR FURTHER INFORMATION CONTACT: Richard M. Whiting, Senior Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3779).

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 12(i) of the Securities Act of 1934 as amended (15

U.S.C. 78.1(i)) the Board is amending 12 CFR Part 206.44 by removing footnote 1, and references thereto from Parts B and C; and by redesignating present footnote 2, and references thereto in Part C, as footnote 1.

Board of Governors of the Federal Reserve System, January 27, 1982.

William W. Wiles,

Secretary of the Board

[FR Doc. 82-2564 Filed 1-28-82; 10:55 am]

BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

Interpretation of the Federal Consistency Term; "Directly Affecting the Coastal Zone"

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Withdrawal of final rule.

SUMMARY: On July 8, 1981, NOAA published final regulations to clarify which Federal activities are considered as "directly affecting the coastal zone" and, therefore, subject to consistency review under section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended (CZMA). Under these regulations, consistency review is required if the Federal agency finds that the conduct of the activity itself produces an identifiable physical alteration in the coastal zone or that the activity initiates a chain of events reasonably certain to result in such alteration, without further required agency approval. Following publication of these final regulations, but before they became effective, NOAA received comments of concern from state governments and Members of Congress assigned to Committees that have oversight responsibilities with respect to the CZMA. In addition, Congressional resolutions expressing disapproval of the final regulations were introduced in both the House and Senate.

On October 16, 1981, NOAA published a notice in the **Federal Register** proposing to withdraw the July 8 regulations (46 FR 50976) and suspending their effective date (46 FR 50937). After reviewing the comments submitted on this proposal NOAA has decided to withdraw the regulations.

EFFECTIVE DATE: This withdrawal becomes effective 60 days after submission to both Houses of Congress unless within 60 days of continuous session after submission, both Houses of Congress adopt a concurrent resolution disapproving the withdrawal. Notification of the effective date of the withdrawal will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Dan Hoydysh, Office of Coastal Zone Management, 3300 Whitehaven Street NW., Washington, D.C. 20235. Telephone: (202) 634-4249.

SUPPLEMENTARY INFORMATION:

I. Background

Section 307(c)(1) of the CZMA states that, "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state coastal management programs."

Regulations published by NOAA on June 25, 1979 (44 FR 37142), implementing the Federal consistency provisions define all the key terms of Section 307(c)(1) except "directly affecting." On May 14, 1981, regulations defining this term were proposed (46 FR 26658) and on July 8, 1981, these regulations were published in final form. (46 FR 35253)

The July 8 final regulations provide that a Federal activity directly affects the coastal zone if the Federal agency finds that the conduct of the activity itself produces an identifiable physical alteration in the coastal zone or that the activity initiates a chain of events reasonably certain to result in such alteration, without further required agency approval. "Direct effects" of Federal planning decisions do not include those effects of the activity being planned that are identified by the Federal agency as uncertain, speculative, remote, or subject to further approval by that same Federal agency.

The July 8 regulations were submitted to Congress for review in accordance with Pub. L. 96-184. The 60-day period specified by this Act had not yet expired, and the regulations had not yet become effective on October 16, 1981, when NOAA published in the **Federal Register** a notice suspending the effective date of the July 8 regulations and a notice proposing to withdraw these regulations.

II. Comments on Proposed Withdrawal

NOAA received comments supporting the withdrawal of the July 8 regulations from eighteen coastal state agencies, the Western Governors Association, three governors of coastal states, the Coastal States Organization, three public interest groups, one Federal agency, and one Congressman. Eleven commentators representing oil and gas industry interests and two Federal agencies opposed withdrawal.

The commentators reiterated the arguments advanced during the long history of this rulemaking. Commentators favoring withdrawal generally based their position on the need for states to manage effectively land and water uses in the coastal zone by reviewing Federal activities on a comprehensive basis at an early stage in decisionmaking. In support of their position, these commentators cited the longstanding interpretation by NOAA of the term "directly affecting the coastal zone", the basic purpose of the CZMA to encourage a Federal/state partnership for managing the nation's coastal resources, and the August 18, 1981, ruling by the Court for the Central District of California in *California* v. *Watt* (CV81-2081MRP). Commentators opposing withdrawal generally supported the July 8 rule as being rational, legally defensible, and balancing the right of states to protect their coastal areas with the need to develop the nation's energy resources.

III. Proposed Rule

This notice withdraws the final regulations published July 8. Another regulation defining "directly affecting" will be proposed in accordance with the Administrative Procedure Act after the Department of Commerce and NOAA have had an opportunity to reconsider this matter.

IV. Effective Date

Public Law 96-464 provides, in part, that final rules implementing the CZMA must be submitted to Congress for review. Thereafter, final rules become effective unless, within 60 calendar days of continuous session after submission, both Houses of Congress adopt a concurrent resolution disapproving the final rules. This statutory requirement raises constitutional issues that NOAA is not addressing at this time. NOAA is treating this requirement as a report and wait provision. Therefore, the withdrawal of the July 8 regulations will not become effective until after this 60-day period has expired. Notification of the effective date of the withdrawal will be published in the **Federal Register** at that time. The July 8 final regulations will remain suspended until the withdrawal becomes effective. The July 8 regulations should not be used as guidance for Federal agency compliance with Section 307(c)(1) of the CZMA.

V. Other Matters

The regulation that is being withdrawn was determined to be a "major rule" under Executive Order 12291 and its repeal would also be a "major rule." However, in view of the extensive review, analysis and consultation which was involved in defining the term "directly affecting," the Director of the Office of Management and Budget has waived the requirements of Section 3 of Executive Order 12291 for this rule.

Neither the Regulatory Flexibility Act nor the Paperwork Reduction Act apply to these regulations. These regulations define actions required to be taken by federal agencies and have no impact on small entities. The regulations impose no additional paperwork or recordkeeping requirements and therefore the provisions of the Paperwork Reduction Act do not apply.

Dated: January 20, 1982.

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

Accordingly, the amendments to 15 CFR Part 930, Subparts C, D, and E, §§ 930.32, 930.33, 930.34, 930.35, 930.36, 930.37, 930.38, 930.39, 930.40, 930.41, 930.42, 930.43, 930.44, 930.45 and 930.46, published on July 8, 1981, 46 FR 35253, are withdrawn.

[FR Doc. 82-2294 Filed 1-28-82; 8:45 am]
BILLING CODE 3510-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 375

[Order No. 202; Docket No. RM81-7]

Exemption from the Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or Less

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule and notice of finding of no significant impact.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amend its regulations to provide an exemption from licensing for two categories of small hydroelectric power projects. Those categories are: (1) Projects over 100 kilowatts, but not more than 5 megawatts, of generating capacity which conform to ten specified criteria, and (2) projects of 100 kilowatts or less which conform to three criteria. Project owners may obtain exemption by filing a notice of exemption, as specified, with the Commission. The exemption criteria are based in part on an Environmental Assessment. The Commission finds that exempting these categories of projects will not be a major Federal action significantly affecting the quality of the human environment.

This rule is designed to ease regulatory burdens and expedite the development of certain hydroelectric projects.

DATE: The final rule is effective February 18, 1982.

FOR FURTHER INFORMATION CONTACT:

James Hoecker, Division of Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street; NE., Washington, D.C. 20426 (202) 357-9342

Ronald Corso, Director, Division of Hydropower Licensing, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426 (202) 376-9171.

SUPPLEMENTARY INFORMATION:

In the matter of exemption from the licensing requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects with an installed capacity of 5 megawatts or less; Order No. 202, Docket No. Rm81-7.

Final Rule and Additional Notice of Finding of No Significant Impact

Issued: January 19, 1982.

The Federal Energy Regulatory Commission (Commission) hereby exempts from the licensing requirements of Part I of the Federal Power Act (Act) two categories of small hydroelectric power projects that have been determined not to have a significant impact on the quality of the human environment. The final rule will implement in part section 408 of the Energy Security Act of 1980 (ESA).[1] Under the final rule, the Commission will exempt from the licensing requirement of the Act any small hydroelectric power project that conforms to the specified characteristics of either of two categories of projects. Exemption of any project in either of the categories of projects will be effective 30 days after the date that the Commission receives a brief Notice of Exemption from licensing. This final rule is the first exercise of the Commission's discretion under section 408(b) of the ESA to exempt "classes or categories" of projects.

I. Background

Title IV of the ESA, also known as "The Renewable Energy Resource Act of 1980," amends the Public Utility Regulatory Policies Act of 1978 (PURPA) to authorize the Commission to exempt certain small hydroelectric power projects on a case-by-case basis or by class or category of such projects from all or part of the requirements of Part I of the Act, including any licensing requirement.

Section 408 of the ESA grants the Commission discretion to provide exemption under certain specified conditions. The proposed installed capacity of a project may not exceed 5 megawatts (MW). To be exemptible, a project must utilize the water power potential of an existing dam, unless it is a project that will utilize a so-called "natural water feature" that does not require the creation of a dam or man-made impoundment. Such a natural water feature project will commonly utilize an elevated lake or a waterway the topographical features of which permit diversion of some waters for purposes of power generation.

Section 408 also provides that certain environmental requirements apply to those projects that the Commission exempts from licensing. Those requirements include the National Environmental Policy Act of 1969, the Endangered Species Act, and the Fish and Wildlife Coordination Act, as well as the related consultation provisions in section 30 of the Federal Power Act that are part of the exemption procedures for small conduit hydroelectric facilities.

On November 7, 1980, the Commission issued Order No. 106,[2] which establishes procedures for exempting from all or part of Part I of the Act any small hydroelectric power project having a proposed installed capacity of 5 MW or less. Those procedures involve case-by-case analysis and determinations related to the advisability of exempting any project, including analysis of the environmental impact of that action. These procedures are initiated by

[1] Pub. L. 96-294, 94 Stat. 611. Section 408 of the ESA amends, inter alia, sections 405 and 408 of the Public Utilities Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 2705 and 2708).

[2] "Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less" (Docket No. RM-80-65), issued November 7, 1980, 45 FR 76115, November 18, 1980. The final rule in Order No. 106 established Subpart K of Part 4 of the Commission's Regulations. That subpart is revised and expanded by the rule in this docket.

submittal of an application for exemption from licensing by any person, if the project uses only Federal lands, or by a person that holds all the necessary real property interests in non-Federal lands, if any non-Federal lands are involved. If the Commission does not act expressly on an application for exemption from licensing within a specified time, absent a suspension of the time for action, the application is deemed granted.

The rule proposed in this docket exempts from licensing two categories of small hydroelectric power projects.[3] One category of such projects is described in § 4.109(a); it includes, among the other characteristics specified, any project with a proposed installed generating capacity of more than 100 kilowatts (kW), but not more than 5 MW. Projects within the second category, described in § 4.109(b), must not exceed 100 kW of proposed installed capacity and are eligible for exemption under slightly different terms and conditions. Any exemption under the final rule is made effective by submitting to the Commission a Notice of Exemption from Licensing by those persons who would also be eligible to file an application for exemption from licensing under the case-specific regulations established by Order No. 106.

This generic exemption from licensing differs from Order No. 106 in several respects. Any small hydroelectric power project, including a project that utilizes a "natural water feature," having a proposed installed capacity of 5 MW or less is exemptible under the case-specific method. Only those projects with specified characteristics found by the Commission not to affect significantly the quality of the human environment are generically exempted under this rule.[4] The case-specific procedures address both exemption from licensing and exemption from provisions of Part I of the Act other than licensing. The categorical exemption process, on the other hand, will apply only to exemption from licensing. While the case-specific procedures will apply to projects that utilize for power generation either an existing dam or a natural water feature, the categorical exemption of both categories of projects under the rule in this docket will apply only to projects utilizing an existing dam. Finally, under the case-specific approach, the Commission is required to consider and act on each project separately, including the development of special terms and conditions in each case. Categorical exemption is accomplished under the terms set forth in the rule alone. The Commission estimates that about 20% of the feasible small hydroelectric power projects with a capacity of 5 MW or less fall within the categories of projects covered by this exemption rule.

II. Comment Analysis

A. *General Comments.* Commenters express general support for the Congressional objectives underlying section 408 of the Energy Security Act of 1980 and approved the Commission's efforts to encourage development and utilization of small-scale hydropower by establishing categorical exemption procedures.

The environmental comments focus primarily on the parameters for the category of exemptible projects set forth in proposed § 4.109(a), the environmental certification procedures in proposed § 4.112(b), and the relationship of exemptible projects to anadromous fish management programs under proposed § 4.111(b). The Commission is urged to be very circumspect in exempting projects from the protection afforded fish, wildlife, and recreational values under current licensing procedures. Overall, state resource agencies are supportive of the proposed rule and none perceived irreconcilable conflicts between exemption of the proposed categories of projects and state environmental protection responsibilities.

The U.S. Fish and Wildlife Service, which also has special responsibilities under section 30(c) of the Federal Power Act, and private environmentalist groups are somewhat more critical of the proposed rule. Their comments reflect a belief that exemptions from licensing under the Act could institutionalize existing poor environmental conditions at existing dams and that the exemptions might make state and Federal fish and wildlife administration more difficult. Several such comments advocated case-specific notice and comment procedures, even for categorical exemptions. During the comment period and the oral presentations, no section 30(c) terms and conditions were recommended to the Commission for inclusion in the rule by state or Federal fish and wildlife agencies. Extensive revisions particularly with respect to standard Article 2 (§ 4.111(a)(2)) governing migratory fish restoration measures are nevertheless included in the final rule pursuant to the comments of those agencies.

Developers and public utilities encourage liberalization of the criteria for the category of exemptible projects described in proposed § 4.109(a). These commenters emphasized that other agencies—Federal, state, and local—will have continuing responsibilities to guard against environmental degradation in the absence of a Federal license.

B. *Need for case-specific review.* Resource agencies, notably the U.S. Fish and Wildlife Service (Service), propose that any project eligible for categorical exemption be reviewed by such agencies after a notice of exemption is filed, with a view toward developing case-specific terms and conditions for each case or proposing modifications in the plan of development. Such a procedure is incompatible with a truly categorical exemption. The categorical exemption rule is a limited implementation of the statutory scheme, which authorizes the Commission to provide regulatory relief for a group of projects at one time. This kind of exemption necessarily requires that exemption occur by operation of a rule which prescribes the paramaters of the exemptible category, sets forth terms and conditions which govern the operation and management of all exemptible projects after exemption, and provides for certification from the appropriate fish and wildlife agency with respect to those environmental matters for which statute requires case-specific review (for example, endangered species).

The objective of the rule is to limit the category of exemptible projects, according to physical and operational characteristics, so as to make environmental degradation very unlikely. The Environmental Assessment attests to the reasonableness of the approach taken. The Service and state fish and wildlife agencies have had, under the rulemaking procedure, the opportunity to impose terms and conditions applicable to the entire category of projects during the formulation of the

[3] The Notice of Proposed Rulemaking in this docket was issued on December 22, 1980 and appears at 46 FR 1291, January 6, 1981.

[4] The Commission has considered proposing another rulemaking to exempt from licensing a category of small hydroelectric power projects that may have significant environmental impacts. Preliminary examination reveals that in order to anticipate the variety of configurations of project works and their impacts, additional terms and conditions might be required than would ordinarily be imposed on those projects pursuant to case-specific exemption. Project owners may therefore choose to obtain exemption under Order No. 106, rather than to have their projects exempted categorically subject to a lengthy set of terms and conditions. Moreover, the Commission has experienced considerable success in expediting exemptions from licensing under Order No. 106. The Commission therefore delays further consideration of another categorical exemption rule.

rule. Moreover, those agencies will have a continuing role scrutinizing certain environmental factors under the requirements of the rule and their own statutory responsibilities.

If fish and wildlife agencies were afforded by the rule a period after a notice of exemption is filed to examine each project and propose individual terms and conditions or project modifications, this would be a case-by-case, not a categorical, exemption procedure. The rule gives meaning to the statutory language by providing a truly categorical exemption, while ensuring the integrity of migratory fish populations, endangered species, historic landmarks, and water quality by establishing a certification process wherein the project owner and the agencies must reach an accommodation *before* the Commission is notified that the project is exemptible under its regulations. Terms and conditions of exemption are included in the rule itself (§ 4.111) and apply to all exempted projects in the class, rather than being tailored to each project.

C. *Categories Too Limited.* Several commenters felt that the exemption process should be pursued more actively and that the categories and criteria for exemption should be expanded. For example, Southern California Edison Company stated that, in order to avoid precluding exemption for many potential sites in the West, the exemption process should also apply to projects that involve diversion structures that create minor impoundments, enlarge a dam by means of flashboards or spillway gates, fluctuate the storage and release regime at an existing dam, divert water up to 3500 feet below the dam, and entail construction of transmission lines up to 10 miles long in new rights-of-way.

The Commission has limited the scope of this initial categorical exemption rule because of the substantial statutory obligations (*e.g.*, National Environmental Policy Act, Fish and Wildlife Coordination Act) which must be addressed prior to exempting a category of projects. This rule delineates categories of hydroelectric power projects which have predictable and very limited environmental effects. Accordingly, the Commission has found that the category of projects described in proposed (now final) § 4.109(a) will not significantly affect the quality of the human environment and, based on that finding, it has been able to proceed more quickly to exempt a category of projects without further environmental review on a case-specific or categorical basis. An Environmental Assessment has now been prepared for the category of projects 100 kW or less, described in § 4.109(b). It supplements the earlier Environmental Assessment for the larger category in § 4.109(a). These smaller projects at existing dams are also found not to affect significantly the quality of the human environment.

Under the case-specific exemption procedures established in Order No. 106, any small hydroelectric power project eligible for exemption under section 408 of the ESA [amending § 405(d) of PURPA] may now be exempted after submittal of an application and case-specific review by the Commission and fish and wildlife agencies. Any "small hydroelectric power project," as defined in § 4.102(1), could qualify for exemption under Order No. 106. The Commission nevertheless recognizes there may be distinct advantages to categorical exemption from licensing where such exemption is practicable under existing law.

One commenter proposes exemption for all hydroelectric power projects having a capacity of 10 MW or less. Such an action would be contrary to statute. The Commission's discretion to grant exemption from licensing or other provisions of Part I of the Federal Power Act extends only to projects with a proposed installed capacity of 5 MW or less.

Another commenter advocated categorical exemption of projects from all requirements of Part I of the Act, not only licensing. Part I of the Act contains a variety of provisions and requirements that affect small hydroelectric power projects in varying degrees. The site-specific characteristics of each project will help determine the extent to which the Commission wishes to apply its dam safety requirements and various administrative and environmental provisions. Therefore, the Commission will consider exemption from provisions other than licensing only on a case-specific basis. Section 4.108 provides an extremely simple application procedure for such exemption.

Generic exemption for projects that utilize natural water features for electric power generation was supported strongly by some commenters. The Commission has considered categorical exemption for these projects and has concluded that the case-specific exemption procedures are more ideally suited to them. While the statute gives the Commission discretion to exempt these projects, it provides little guidance as to their characteristics or environmental impact. The Commission has undertaken to examine the nature and effects of natural water feature projects in order to ascertain the feasibility of a second categorical exemption rule. In response to the related assertion that the current definition of "dam" might bar even case-specific exemption of certain projects that utilize diversion structures but are, arguably, exemptible natural water feature projects, the Commission does believe that these projects may be considered for exemption under the case-specific procedures.[5]

Some issues dealt with by the Commission in Order No. 106 were raised again in this docket, namely that the rule (§ 4.102(h)) excludes from exemption any projects that utilize the same impoundment and that have an aggregate capacity of more than 5 MW and any projects that are part of a larger licensed power project.

As stated in Order No. 106, the practical difficulties that would arise from exempting more than one project at a single impoundment include possible circumvention of the statutory 5 MW limit and difficulties in applying conditions on the use and maintenance of dams or other appurtenant facilities and regulation of the impoundment. Moreover, in those rare cases where exemption of small hydroelectric power projects contained within currently licensed projects is both feasible and desirable, the Commission has already provided for waiver of these restrictions (§ 4.103(d)) on a case-specific basis. After considering the arguments supporting exemption for parts of licensed projects, both in this docket and in Docket No. RM80–65, the Commission is still persuaded that exemptions for such projects (assuming the whole project would not qualify for exemption) normally would create practical, administrative, and legal difficulties that tend to undermine the real benefits of obtaining exemption. However, very small generating facilities will not, if developed within existing licensed projects, affect the impoundment or administration of the licensed project significantly. Projects at existing dams, if 100 kW or less, are exempted under § 4.109(b) even if part of a licensed project.

[5] The Commission proposes in Docket No. RM81–—, to amend § 4.102 by further defining what is meant by a project that utilizes a natural water feature. The definition of "dam" will also be changed accordingly. The amendments make clear which projects, other than those at existing dams, will be exemptible under the procedures established by Order No. 106, consistent with section 408 of the ESA. Pending the outcome of that rulemaking, the issue of whether a diversion-type structure constitutes a dam and must therefore be "existing" at the time of exemption will be addressed individually as cases arise, including those arising under an application for waiver.

D. *Section 4.109 criteria.* Section 408(a)(6) of PURPA states that an "existing dam" is a dam that does not require construction or *enlargement* of impoundment structures other than for repairs and reconstruction. A project must utilize an existing dam in order to be exemptible under this rule. Proposed and final § 4.109(a)(1) [6] contain that limitation and, in conjunction with other criteria, is intended to exclude from the category of exemptible projects those projects that utilize dams modified by the installation of flashboards or spillway gates where such modification would substantially change the reservoir area or water surface elevation of the impoundment, as these features existed before exemption. To the extent that any modification of a dam presents factual questions about whether a dam that has been breached is "existing" within the meaning of the statute, the Commission prefers to examine such issues on a case-specific basis.

Section 4.109(a)(2) prohibits any increase in the normal maximum surface elevation of an existing impoundment due to repairs or reconstruction of a dam. Several commenters argue that this limitation should also apply to project operation. The Commission agrees that project operation should not fundamentally alter the impoundment but believes that the rule anticipates this concern by also limiting change in the prevailing regime of storage and release from the impoundment. The term "prevailing regime of storage and release" is intended to refer to project operation, whereas the term "normal maximum surface elevation" refers to an overall historic, nonflood power operation level or the impoundment level that the poject structures were designed to contain.

In response to the question whether breached dams may be repaired to a former height, the Commission also believes that the limitation relating to the prevailing regime or the normal maximum surface elevation obviates the need to address this consideration further. In other words, this category of exemptible projects is defined so as to prevent new inundations of land or major changes in stream flows above or below the project. Breached dams may sometimes qualify as existing dams and therefore may be exemptible under the rule in this docket, but only if the impoundment level and flow regime remains unchanged by repairs or reconstruction. This may be a difficult qualification for partially rebuilt dams to meet. If repair or reconstruction of the dam entails a significant change in the impoundment level, the project may be exemptible under the procedures in Order No. 106, provided it can be shown that an actual dam and impoundment existed at the time of the application.

One commenter is concerned that the project construction or operation could result in dewatering of the streambed in a manner harmful to fish spawning. The Commission acknowledges that project development has the potential to unsettle or harm fish spawning. However, as part of the general philosophy of the rule in this docket, the category of exempted projects has been limited in ways that minimize that risk. The rule contains procedures which permit State and Federal resource agencies to review the proposed development for its effect on water quality and fish populations.

Section 4.109(a)(3) establishes an important criteria for any exemptible project, namely that no change in the prevailing regime of storage and release is permitted. Several commenters believe that exemptions may institutionalize environmentally detrimental situations at existing dams. For example, a dam currently not used as a source of power generation may be obstructing upstream or downstream fish passage or otherwise harming water quality. The commenters would have the exemption process serve as a means for rectifying such existing problems on obstructed streams.

The Commission believes that reformation of certain adverse environmental conditions is a legitimate goal of the exemption process, just as it is for licensing. During the licensing process, the Commission undertakes to investigate historic water resource problems of the kind mentioned in order to rectify such problems. If it were not for power development at an unused or abandoned dam, it could prove difficult in many instances for fish and wildlife agencies to effectuate positive changes in the environment of a project. While the Commission does not wish to impose undue burdens on power development, current environmental law requires that many of the same factors be considered under an exemption as under a license. The Commission aims to minimize adverse impacts on the existing ecological balances in the vicinity of a project. However, under an exemption, the focal point of the protective efforts becomes the jurisdictional fish and wildlife agencies, rather than the procedures of the Commission. The certification provisions in §§ 4.112(b) and 4.113(b) and the terms and conditions in § 4.111, most notably Article 2, are designed to afford an opportunity for assessment and mitigation of the environmental impacts from projects that are exempted under the final rule.

Some commenters believe that the prevailing regime that must be maintained under the criteria in § 4.109(a)(3) should be synonymous with the natural flow patterns of the stream. This is arguably what is meant by a "strict run-of-the-river" project, where inflow equals outflow and where there is no storage of water. The Commission is aware that the meaning of "run-of-the-river" is interpreted different ways. There are some basic considerations in assessing the naturalness of any hydrologic situation. Existing dam projects will most often involve some storage of water but this situation will be accommodated by nature over time. Nevertheless, the alteration of the existing flow pattern by means of an obstruction that forces the water over the dam or through a penstock, may entail unnatural impacts on fish or plant life or water quality. Likewise, an irrigation project is not, strictly speaking, a run-of-the-river project; yet, it may qualify for an exemption under the final rule because the flows through the project will remain in their historic pattern into and out of the project. A water storage facility, on the other hand, may require a change in the historic flow pattern for power generation and would not ordinarily be regarded as a run-of-the-river type project for which this rule contemplates exemption. The Commission believes that the final rule will encourage environmentally benign power development by means that do not upset the existing inflow and outflow patterns at a site. In assessing any change in the prevailing regime, the rule allows sufficient latitude to accommodate existing daily average, hourly, seasonal, or yearly average release rates, depending on the project.

The commenters who express concern about the effects of exempted projects on downstream flows, minimum water requirements for fish and wildlife, draw-down on lake levels, effects on fish spawning, and changes in water temperature are asked only to consider the prohibition against any change in the prevailing regime of storage and release. Because of the importance of this limitation, the Commission will not attempt to soften it by reference to any "significant change." If, as hypothesized by one commenter, the prevailing regime

[6] Section 4.109(b)(1) in the final rule also requires an existing dam for the category of projects 100 kW or less, as well as some of the other criteria originally applied to the category of larger projects in § 4.109(a). This discussion applies equally to the category of micro-hydroelectric power projects, as appropriate.

of the stream changes naturally over time, the project must still be operated on an inflow-equals-outflow basis. If a State agency proposes changes in the established flow regime at the project site for the purposes of improving water quality, the related impacts of the proposed change are best addressed in the case-specific exemption procedures and the project will not be exemptible under this rule.

Some commenters inquire about the basis for the 300-foot limitation in § 4.109(a)(4) on diversion of water from the waterway, advocating that the water return point be increased to a maximum of 3500 feet below the existing dam. The Commission proposed the 300-foot restriction in this rule based on its experience in licensing small hydroelectric power projects. In no instance were serious environmental problems present when water diverted for power purposes was returned to the streambed within 300 feet of the toe of the dam. Diversions of 3500 feet would clearly be outside the bounds of propriety for this categorical type of categorical exemption. The risk of environmental damage is diminished in proportion to the length of the diversion. The Commission believes that no appreciable risk exists for this category of projects if diversions are limited to 300 feet.

Other commenters claimed that the environmental impact of any diversion, regardless of its length, depends on site-specific characteristics and should be individually evaluated by state and Federal fish and wildlife agencies. The Commission believes that these concerns are anticipated by the final rule in § 4.112(b) with respect to site-specific certifications afforded for water quality, migratory fish, endangered species, and critical habitat.

In response to a related comment, the final rule is modified to indicate that the measurement of the length of the water diversion will be "in the thread of the stream." Finally, the Commission will not "grandfather" diversions resulting from use of existing pipelines that remove water from a streambed more than 300 feet, except under the case-specific procedures in Order No. 106 which provide an opportunity for evaluation of the impacts of such diversions.

Section 4.109(a)(5) establishes as one criterion of the exemption category the size and length of any new primary transmission line construction. The Commission will retain the 69 kilovolt design capacity limit because transmission lines of this size are generally regarded as distribution lines and not as high voltage lines. Likewise, only one mile of new construction will be permitted in a new right-of-way in order to limit possible environmental impacts. The request that no limit be imposed on underground construction of lines or on overhead lines, if built within the boundary of a licensed project, is rejected because the boundaries of licensed projects will rarely exist near exempted projects and, in any case, are not a relevant standard for judging environmental impacts. The rule already provides, as one commenter advocated, liberal limits on the construction of transmission lines within existing rights-of-way.

Commenters express concern that if transmission line construction alters a right-of-way, fish and wildlife may be affected. It is argued that the rule should contain qualitative limitations on such construction and should consider aesthetics and the effect of right-of-way maintenance on vegetation. The Commission believes that other criteria, terms and conditions in § 4.111, or the environmental certifications in § 4.112(b) and § 4.113(b) will protect sensitive environmental features from harm due to transmission line construction. It is highly unlikely that transmission lines of this size will significantly affect the aesthetic qualities of a project's surroundings. In addition, there are state laws regarding herbicides and other means of right-of-way maintenance that guard against undue damage to vegetation. The rule does not contain limitations on the width of a right-of-way created to accommodate construction because the size of any right-of-way will always be proportionate to the size of the line constructed.

Under proposed § 4.109(a)(6), an exemptible project may utilize only a dam "at which there is no significant existing upstream or downstream passage of fish." The objective of this criteria was to exempt only those projects where migratory fish species would not be affected by project development. In other words, the rule was designed to preserve the status quo at the dam site with respect to fish. Some commenters suggested that establishing the presence of upstream or downstream *passage* of fish as a criteria is not appropriate because the dam itself may effectively prevent any passage of migratory fish. Accordingly, the criteria has been rewritten to limit the category of exemptible projects according to the presence of any significant, existing population of migratory fish at the dam. It is unlikely, of course, that migratory species, including species like trout and anadromous fish such as salmon, will be consistently found in large numbers at a dam that totally obstructs any upstream or downstream movement by those species.[7]

Several terms in § 4.106(a)(6) were questioned by commenters. It is argued that the words "significant" and "existing" should be taken to include all ecologically valuable fish, and not simply those of immediate recreational or commercial value, and fish that are stocked as well as naturally-occurring species. The Commission wishes to point out that state and Federal fish and wildlife agencies must certify, under § 4.112(b)(2), the status of migratory fish populations at the dam site. A "significant" migratory fish population would involve the presence of fish in such numbers and with such frequency that project development and operation would have a significant impact, such as from turbine mortality, on that population. Ultimately, the state or Federal fish and wildlife agency must determine what it considers to be "significant." With respect to an "existing" fish population, the criteria in paragraph (a)(6) is concerned only with the time at which the project will become exempt. Whether migratory fish are native or stocked is immaterial insofar as state certification of their presence is concerned. In response to additional comments, it is important to note that paragraph (a)(6) and the terms and conditions of exemption (§ 4.111(b) and § 4.112(b)(2)) permit appropriate fish and wildlife resource agencies to measure fish populations by whatever means they consider appropriate and to prescribe whatever migratory fish restoration measures are suited to a particular project.

Section 4.109(a)(7) requires that an exempted project not violate applicable state or Federal water quality standards. The U.S. Environmental Protection Agency (EPA) comments that this and other provisions (§ 4.112(b)(1) and (c)(5)(i)) should assign responsibility for establishing and enforcing water quality standards to the states, not the EPA. The provisions at issue pertain to state "or" Federal water quality standards because, if the states do not have EPA-approved water quality standards, the applicant may have to obtain certification on this matter from EPA itself. Ordinarily, the states alone will

[7] The terms and conditions of exemption in the proposed and final rules in this docket provide for restoration of migratory fish passage at the dam where no passage facilities exist at the time of exemption. See Article 2 in § 4.111(b). However, the content of Article 2 is somewhat amended from the original proposal to limit its applicability as a condition of exemption by requiring that fish restoration measures be proposed during the consultation process.

handle water quality enforcement. The water quality certification in this rule may rely on state or Federal procedures established pursuant to the Clean Water Act but it is not the same as, and should not be confused with, certification requirements under section 401 of that act which apply only where a Federal license is at issue.

In response to other questions raised by the EPA, paragraph (a)(7) applies to any direct effect the project development may have on water quality standards, including those downstream from the penstock bypass area. State water quality certification will usually include review of how project operations might indirectly degrade water quality because of the presence of a downstream discharger with an effective national pollutant discharge elimination permit. However, such a scenario is unlikely to affect projects under this rule because of the prohibition against alteration of the prevailing flow regime.

Section 4.109(a)(8), as proposed, required that no exemptible project involve construction or alteration of a historic site. Commenters suggest that the term "site" be changed to "property" in order to include areas of archeological significance and that appropriate state officials be permitted to certify that the project has no effect on historic landmarks. The Commission believes that the proposed criteria are sufficient to include archeological sites and to permit the state Historic Preservation Officer to withhold certification under § 4.112(b)(3) if a project might appear to affect a historic place adversely. The rule currently provides for adequate consultation with state officials regarding sites that are eligible for inclusion in, or are currently included in, the National Register of Historic Places.

Commenters also indicate that some project-related construction could have a positive restorative effect on a historic site. This criterion and its related certification provisions are therefore amended to provide that project construction will not "adversely affect" historic places.

Proposed § 4.109(a)(9) required that exemptible projects not involve construction in the vicinity of any threatened or endangered species or critical habitat listed or designated in the regulations of the Department of the Interior. Several commenters suggest that this restriction apply to project operation as well as construction, although no commenter identified impacts on endangered species or critical habitat that could be associated solely with project operation. The operation of small hydropower projects could affect these ecological features. However, the absence of any fluctuation in the impoundment or changes in the flow regime effectively eliminates such concerns. State or Federal agencies, which are given an opportunity to study potential effects of development under this rule, and anticipate the effects of dewatering the streambed immediately below the dam. For this reason, the criterion will be revised to prohibit "adverse effects" rather than "construction in the vicinity."

The Commission recognizes that there are state-designated endangered species that the rule does not address. No commenters proposed protection of specific state-designated species within the context of this rulemaking. The Commission need not consider the state-listed species under the applicable Federal laws. This is not a departure from the prevailing practice in Commission licensing proceedings. Therefore, the rule will continue to address only endangered species and critical habitat that are designated in the regulations of the Department of the Interior. In addition, the Commission has substituted language to reflect that only the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is authorized under law to certify the effects on Federally-designated species or habitat, pursuant to consultations with that agency.

One commenter advocates exemptions for projects that constitute only part of a licensed project, even if the remainder of the project remains subject to a license. Section 4.109(a)(10) prohibits such exemptions on a categorical basis. The Commission believes that these projects would not necessarily be ideal candidates for exemption, as claimed, if their construction or operation has a significant direct effect on the impoundment or any impoundment structure. Order No. 106 addressed the practical difficulties with exempting portions of licensed projects from licensing, thereby creating two operative sets of terms and conditions affecting identical or related water resources. The Commission believes that applying to the exempted project all the terms and conditions of the original license would undermine the value of an exemption. Exemption of a portion of a licensed project therefore continues to be untenable as a general proposition. There are two notable exceptions. Projects with a capacity of 100 kw or less may be categorically exempted, even if within the boundary of a licensed project. As stated in Order No. 106, the Commission will also consider, on a case-specific basis, any petition for waiver of this limitation and may exempt portions of licensed projects where the facts warrant.

The rulemaking in this docket contains neither a criterion for eligibility nor a certification procedure, with respect to wild, scenic, or recreational rivers. A segment of river on which there is an existing dam will not ordinarily be designated wild and scenic, although an existing dam project located upstream may have an indirect effect on such rivers if the impoundment levels or flows were fluctuated during project operations. On that basis, this category of projects poses no threat to wild and scenic resources because changes in the prevailing flow regime are prohibited. On the other hand, an existing dam project may be located on a recreational river. The Commission foresees no adverse impacts on recreational rivers due to the limiting criteria for eligibility for exemption under this rule.

E. *Certifications; §§ 4.112(b) and 4.113(b).* The certifications that are made by a project owner in the Notice of Exemption operate in conjunction with the criteria in § 4.109 (a) and (b) and the terms and conditions in § 4.111 to limit the possible environmental impact of exempting projects in this category. Several commenters state that section 408 of the Energy Security Act requires that both state *and* Federal agencies be consulted with respect to fish and wildlife resource matters and that the certifications that provide for state *or* Federal participation are incorrect. The Commission agrees with this assessment and has made corrections in the appropriate sections.

One commenter argues that the certification requirements should be eliminated because they would unduly delay exemption and incline the Commission staff to process exemptions for large rather than small projects. The Commission does not believe that these certifications will be as burdensome as the processes of getting a license or case-specific exemption, as argued. The burdens notwithstanding, specific environmental statutes, notably the Clean Water Act, the Fish and Wildlife Coordination Act, Endangered Species Act, and the National Historic Preservation Act, require a degree of site-specific evaluation that is unavoidable even in the context of categorical exemptions. However, a large portion of the Commission's environmental responsibilities for the action taken in this docket have been discharged on a generic basis through an

Environmental Assessment and by the very terms of the rule.

With respect to water quality certification, one commenter requested that an actual certificate be filed with the Notice of Exemption and another advocated elimination of the certification requirement altogether because exemptible projects will not cause or create any new or altered discharge into a stream. The Commission will not require the filing of documents other than the Notice of Exemption by the project owner. Its objective in this limited requirement is to eliminate the submittal and processing of supporting documentation like that entailed by license application. There are understandable fears that a project developer will certify to the Commission facts that are not true. However, the rule anticipates this possibility by requiring service of the Notice of Exemption on the consulted or certifying agencies. The Commission has retained the water quality certification requirement but, because water quality certification is in the hands of the states, any appropriate agency may choose to waive such certification in any particular case and may determine the form this water quality certification will take. Certification that conforms with section 401 of the Clean Water Act need not be applied to exemptions from licensing.

The Commission proposed to allow a project developer to utilize an approved expert in obtaining a certification that no historic site, endangered species, or critical habitat was threatened by project development. This type of provision was feasible because of the objective nature and availability of source materials upon which to base such determinations. Environmentalists are concerned, however, that this practice could lead to inadequate surveys or even that the project owner would make the certifications based on inexperienced personal observation. The Commission emphasizes that the expert biologist or archaeologist must be approved by the fish and wildlife agency or state Historic Preservation Officer in order to conduct the independent surveys on endangered species or historic sites, respectively. Independent surveys may save other agencies and the project owner time and effort. An expert acting as a surrogate for, and with the approval of, the appropriate agency will do an effective job of assessing sensitive environmental features. The provision therefore remains unchanged.

State agencies also raise questions about how exemptions would affect issuance of dredge and fill permits under section 404 of the Clean Water Act and restrictions such as those imposed by the state on open burning that might result from project construction. The exemption process will not affect the separate jurisdictional responsibilities of other agencies by means not otherwise preempted by the Federal Power Act. Enforcement mechanisms are available to those agencies under separate applicable legislation, just as under the licensing procedure.

One of the most notable additions to the final rule is a fifth certification provision that requires the project developer to consult with state and Federal fish and wildlife agencies in order to obtain an indication of what, if any, migratory fish restoration measures will be required by such agencies after a project is exempted by the Commission. This certification operates in conjunction with Article 2 in § 4.111(b) to condition the exemption on compliance with any fish restoration programs about which a fish and wildlife agency has informed the developer during this consultation process. This does not, of course, mean that fish and wildlife agencies will be unable to enforce compliance with any fish restoration measure not otherwise set forth at the time of consultation or exemption. It only means that the exemption itself may not be revoked for such non-compliance.

F. *Exemption of projects 100 kilowatts or less.* The Commission received several comments about proposed § 4.113 which would have exempted so-called "micro-hydroelectric" power projects without the filing of the Notice of Exemption and without specific terms and conditions of exemption. The commenters generally requested that the Commission develop a more extensive environmental record about the impacts of these projects and that at least certain certifications and terms of conditions be applied to them.

The Commission acknowledges that, at the time it issued a Notice of Proposed Rulemaking, its experience with such small projects was limited to a small number of licensing proceedings. Subsequently, the Commission has undertaken to evaluate generically the environmental impact of micro-hydroelectric power projects. The Commission concludes that these projects do not have a significant impact on the quality of the human environment. (*See* Finding of No Significant Impact, *infra.*) Because of the typical physical and engineering characteristics of such small developments, they pose little threat to water quality, historic sites, endangered species, critical habitat, or fish. Despite these environmentally benign characteristics, the Commission will include in its categorical exemption of these projects the limited certification provision proposed by the Department of the Interior regarding endangered species and critical habitat. As indicated in the supplemental Environmental Assessment, the criterion that a project should not change the prevailing flow regime has not been included in the rule because projects of this size will not operate in a mode other than "run-of-the-river"; in other words, there will be little storage or variable patterns of storage and release. The category of exempted micro-hydroelectric projects is described in § 4.109(b). The final rule will require submittal of a Notice of Exemption as described in § 4.113. As pointed out by some commenters, submittal of a notice is essential if the Commission is to prevent attempts to develop mutually exclusive projects under both a license and an exemption.

The provision permitting submittal of a conflicting license application that proposes to develop 7.5 MW at an exempted micro-hydroelectic power project was criticized as allowing a very small-sized project to tie up a site capable of supporting more power generation than 100 kW but less power than 7.5 MW. The Commission acknowledges that this provision [proposed § 4.113(c)(2)(i)] may prevent competition to develop a project up to 7.5 MW under a license where a micro-hydroelectric project has priority. However, the economics of hydropower development should encourage maximum utilization of available water resources by project owners. In those instances where small projects now exist, the addition of capacity necessary to obtain an exemption will be governed by economy of scale considerations and micro-hydroelectric projects will not be developed where far bigger projects would be practical. The Commission thus prefers to utilize the same exception to the rule against license applications for categorically exempted projects 100 kW or less that it applied to all exempted projects under Order No. 106.

Finally, commenters suggested 100 kW may be unreasonably low for a distinct category of exemptible micro-hydroelectric projects. A capacity range of 200 to 500 kW or less is suggested. Alternatively, one commenter proposed that the stream flow utilized could provide a more plausible standard than the generating capacity of the project.

The Commission has found that projects 100 kW or less share relatively similar environmental and physical characteristics which suggest 100 kW of generating capacity as a suitable standard for delineating a category of exemptible projects. The Commission does not agree that there is a necessary correlation between the amount of water (cubic feet per second) utilized by a power project and the required physical plant constructed to utilize that flow or the environmental impacts that result. Consequently, the Commission will retain the general parameters proposed in § 4.113 and now incorporated, with some additions, into § 4.109(b).

G. *Terms and Conditions.* EPA argues that Article I in § 4.111(a) should be read to mean that revocation of an exemption can result from the failure of a project to meet the criteria in proposed § 4.109(a) as well as violation of the terms and conditions in § 4.111. The Commission agrees with this interpretation. Any exemption will be subject to revocation if it can be demonstrated to the Commission that the threshold criteria for exemption have not been met as represented in the Notice of Exemption.

The most commented upon provision in the proposed rule is Article 2, now § 4.111(a)(2), which would have made compliance with any migratory fish restoration measure required in the future by state or Federal fish and wildlife agencies a condition of an exemption from licensing. On one hand, some commenters argue that the proposed condition is a vague and open-ended commitment that would discourage investment in small hydroelectric power projects. The provision is criticized as giving agencies excessive and unilateral authority over future project operations in a manner that could undermine a developer's investment. It is also suggested that Article 2 should be based on negotiated agreement between the developer and fish and wildlife agencies, subject to Commission review.

On the other hand, many commenters contend that Article 2 does not provide site-specific evaluation of a project or pre-exemption consultation with respect to fish restoration programs. They contend that, without early consultation between developers and fish and wildlife agencies, later retrofitting of a project to permit fish passage could prove difficult or impossible.

The Commission has restyled Article 2 and its counterpart certification in § 4.112(b)(5) to satisfy the objectives of each side of this controversy. Exemption of the projects described in § 4.109(a) will be conditioned on compliance with any migratory fish restoration program about which a developer is informed during consultation with fish and wildlife agencies before the exemption is granted. It will be left to the respective parties to show evidence of agency recommendations if non-compliance with such a recommendation is ever alleged as grounds for revocation. As stated above, fish restoration programs that are developed subsequent to the consultation procedure and about which a project owner was not originally apprised may still be enforceable under state law. However, an exemption will not be affected by non-compliance with such a program.

Section 30(c) of the Federal Power Act requires that the Commission include in any exemption the terms and conditions prescribed by state and Federal fish and wildlife agencies. While negotiation between these agencies and potential developers is encouraged with respect to the installation of fish passage facilities, the Commission takes the view that fish restoration measures prescribed as part of a state's overall plan to reopen waterways to migratory fish populations ought to be regarded as a standard term and condition, insofar as a project owner is fairly apprised of what to expect in the future. The Commission wishes to make clear that migratory fish restoration programs will also include the introduction of species of migratory fish similar but not identical to those which had been historically present. The related concerns of some commenters that large birds of prey and terrestrial wildlife associated with the aquatic ecosystem be protected where power development is authorized will continue to be addressed under state law, without the customary focal point for expression of state requirements otherwise provided under the licensing process.

One commenter questioned whether the revocation provision in Article 3, now § 4.111(a)(3), applies only to the original applicant for exemption who fails to meet a construction schedule or to any exemption applicant who may file a Notice of Exemption within two years of revocation. The two-year bar to any new Notice of Exemption runs with the project and applies to any potential developer. This policy is based on the Commission's conclusion that a person who fails to comply with the construction schedules under Article 3 could easily transfer the necessary property rights to develop and operate the project to another person solely for purposes of delaying development and avoiding this prohibition. In any event, the original exemption applicant and any other person interested in developing the site may apply for a license any time after revocation of the exemption. Article 3 is the device by which the Commission will seek to encourage the exercise of diligence in developing exempted projects.

In § 4.111(b), four of the original six conditions are applied to projects 100 kW or less, as described in § 4.109(b).

H. *Categorical exemption versus other applications § 4.110.* Section 4.110 permits a licensee to obtain an exemption from licensing for its licensed project. The EPA raises several questions about exempting projects that have currently unexpired licenses, especially because exemption entails adding generation capacity. EPA favors inclusion in an exemption any environmental conditions that were specified in the preceding license. Moreover, currently licensed projects should only be exempted on a case-specific basis, argues EPA. The Commission seeks to categorically exempt as many projects as possible and it finds that the existence of a current license is not a reasonable basis for excluding a project from the categories described in § 4.109(a) or (b). Any project exemptible under this rule will require fewer and somewhat less comprehensive terms and conditions and dam safety provisions than those ordinarily contained in a license. Amendment of an existing license in order to accommodate new capacity generally involves procedures similar to those set forth for initial licensing. Exemption and the accompanying addition of new capacity will entail separate consultation and certification procedures which offer sufficient protection to the environment with less delay and fewer of the terms and conditions associated with licensing.

One commenter advocated that applications for exemptions should be accepted by the Commission during the notice periods for either preliminary permit or license applications and that exemptions should be granted in preference to permits or licenses. The Commission wishes to emphasize that, under this rule, the project developer does not "apply" for an exemption but merely files a Notice of Exemption. Notices of Exemption affect permit and license applications differently than applications for exemption under Order No. 106, which are considered on a case-specific basis. Notices of Exemption have an automatic effect on the legal status of a project and therefore the time at which a Notice is filed is critical in determining which interested party has

priority in pursuit of project development.

The Commission believes it equitable to prefer the first-filed license application over a subsequent exemption notice because the project owner has the greatest prior opportunity to file a Notice of Exemption or otherwise seek to develop the site, and because a license application normally represents considerable expenditures of money and effort in formulating a plan of development. When dealing with categorical exemptions operable under the terms of a rule, it is important to have determinate filings because generic procedures ought not become involved in evaluation or other disposition of competing applications. For that reason, a Notice of Exemption ought not to constitute a trump to be used only after a license application by the project owner induces competition or after a non-owner applies to develop a site that was available to the owner all along.

Insofar as a person other than the project owner seeks to obtain a preliminary permit for a project eligible for categorical exemption, the Commission agrees with the commenter that the owner of the project should have an opportunity to file a Notice of Exemption in competition with the permit application. Preliminary permit applications indicate only an intention to study a project's feasibility and a few of the considerations mentioned above with respect to license applications apply to permit applications. Section 4.110(a) is therefore amended by adding an additional exception to the general rule which, among other things, indicates that a Notice of Exemption will not be accepted if there is a pending permit application. The new exception allows the project owner a limited time to file a notice or to indicate an intent to file such notice after a permit application is accepted by the Commission.

In response to the most common comment on § 4.110, the Commission believes that the 7.5 MW threshold, established as the minimum requirement for filing a license application on an exempted project, is reasonable because it protects the value of exemptions while permitting more comprehensive development than an exempted project is allowed under statute. The Commission is not, as one commenter suggested, making it possible to exempt projects up to 7.5 MW.

The American Public Power Association and the City of Santa Clara, California, and the Connecticut Municipal Electric Energy Cooperative again raised objection to the Commission's policy of not applying the state/municipal preference under section 7(a) of the Federal Power Act to exemptions under this rule as the Commission does to licenses. The Commission has dealt fully with this issue in Order Nos. 106 and 106–A and continues to adhere to its position.

I. *Notice of Exemption.* Commenters request that the proof of service provision in § 4.112(a)(2)(i) be revised to include "and the fish and wildlife agency for each state in which the project is located." This revision is incorporated into the final rule. Some commenters advocated that several additional kinds of agencies be notified of the exemption, namely state public service commissions, and a variety of public land management agencies that deal with open space programs, wild and scenic rivers, and management of public access points and recreation programs. The proof of service provision in § 4.112(a) serves a specific purpose; that is, it provides agencies which have specific statutory responsibilities under the provisions of section 408 of the Energy Security Act with an opportunity to double-check the certifications that project developers supply in their Notices of Exemption. Several of those agencies will be state agencies and the Commission prefers to leave to the states the coordination of land management programs that are unrelated to any clear Federal statutory mandate.

The Colville, Makah, and Tulalip Indian Tribes request that project developers provide notice of project development and exemption to tribal fishery agencies, as well as to Federal and state fish and wildlife agencies, if a project uses tribal lands or affects a body of water that runs through tribal lands. The tribes perceive in the development of many small hydroelectric power projects in the Northwest a threat to traditional fishing rights arising from the obstruction of the passage of anadromous fish.

Given the scope of the categories of exemptible projects delineated in this rule, the Commission does not believe that exemptions pose a threat to Indian fishing rights. As the comment of the tribes indicate, projects on Indian lands probably will not be exemptible except when made so by Indian tribes or their designees. Only a person with the property rights necessary to develop and operate the project may obtain exemption. In the final analysis, exemption of a project does not curtail, in any way, the protections afforded by state law, other Federal laws, or Indian treaties. Under the terms of section 30(c) of the Federal Power Act, the Commission is obligated to defer to the judgment of the U.S. Fish and Wildlife Service and the appropriate state fish and wildlife agency with respect to fish and wildlife protection. While there is no statutory obligation to broaden application of section 30(c) to include terms and conditions prescribed by tribal fishery agencies, the Commission encourages the state agencies to consider the positions of Indian tribes that may have an immediate interest in the fisheries potentially affected by an exemptible project.

J. *Enforcement.* Several commenters observe that the rule does not provide for reporting requirements with respect to the continued operation of an exempted project, publication of a Notice of Exemption in papers of general circulation, a limited term of exemption followed by routine re-investigation of the project, or other monitoring devices.

The exemption process is designed to free project development and operation from many Federal requirements with a minimum of ongoing supervision, consistent with the public health, safety, and optimal utilization of the Nation's water resources. An exemption from licensing should not result in the reimposition of a license requirement under another name. Monitoring of a project's development and operation is left primarily to the marketplace where other interested persons who seek to utilize and develop a water resource will help ensure that the project owner complies with applicable law.

The Commission has reserved to itself, in Article 1 and other provisions, certain investigative and enforcement powers. In addition, state and Federal resource agencies will also continue to perform their duties to ensure that exempted projects are operated in the public interest. Opportunities for the public to participate in determining the course of water power development is always available through the proceedings of those agencies. Such an opportunity has been available to any interested person through this rulemaking. The exemption process is designed to encourage hydropower development and to do so in a way consistent with the public interest.

The Commission does not believe that commenters' proposals for case-by-case comment opportunities and state veto power are workable or desirable. However, in order to provide the states with an opportunity to double-check a project's environmental integrity, some leeway in the effective date for each exemption is reasonable. Therefore, § 4.109(c) makes exemptions effective 30 days after the filing of a Notice of

Exemption, thereby allowing state agencies or other interested parties to examine the eligibility of each project for exemption and to review the certifications attested to by the project owner before the project becomes exempt.

K. *Jurisdiction.* Section 408 of the Energy Security Act gives the Commission discretion to exempt small hydroelectric power projects from all or part of Part I of the Federal Power Act. The Commission has provided avenues whereby many projects with 5 MW or less of proposed installed capacity may be exempted from the licensing requirements of Part I. Exemptions constitute an exercise of Federal jurisdiction, just as the licensing of such projects does. It is incorrect to suppose, as an occasional commenter has, that an exemption from the licensing requirements of the Federal Power Act constitutes a waiver of the Commission's jurisdiction over small hydroelectric power projects. The objectives of this rulemaking and of Order No. 106 are to be distinguished from any abdication of Federal responsibilities over the Nation's water power resources. This distinction is evidenced, in part, by the nature of the exemptions provided by the Commission. Those exemptions contain terms and conditions that reserve to the Commission the final authority to dispose of water power projects that affect the public interest under the Commerce Clause of the United States Constitution.

L. *Natural Water Features.* The Commission will not exempt in this rulemaking water power projects that utilize natural water features for electric power generation. The Commission recognizes, however, that small hydroelectric power projects that take advantage of natural topographic features to generate electricity without the use of a man-made impoundment should be candidates for exemption from licensing. Some kind of diversion or intake structure will be required to direct water into a conduit for delivery to a powerplant, even if a "dam," in the conventional sense, is not required to create hydraulic head. Such projects are now exemptible under the procedures established by Order No. 106 and may depend on water diversion facilities which, strictly speaking, do not constitute a dam under the definition in § 4.102(a). In a collateral rulemaking, the Commission proposes to define more specifically the characteristics of natural water feature projects and to modify the limitation contained in the current definition of a "dam" that now prevent the Commission from considering for exemption on a case-specific basis some diversion projects that may be legitimate natural water feature projects as opposed to facilities which impound water to create hydrostatic head.

M. *Government Dams.* The Commission wishes to make clear that it will not entertain applications for exemption from licensing, notices of intent to file such applications, or Notice of Exemption from licensing for any small hydroelectric power project that proposes to use a Government-owned or operated dam. The definition of "small hydroelectric power project" in § 4.102(1) conveys that idea. It has been the Commission's consistent opinion that, absent an act of Congress, no statutory authority other than the Federal Power Act exists whereby non-Federal development may be authorized to use the surplus waters at a Government dam for power generation purposes. Exemption from licensing would therefore require a non-Federal project developer to obtain the Congressional approval for the use of a Government dam. In addition, the Commission believes it necessary to evaluate the effects of construction on a dam and on the affected water resources to protect the taxpayer's investment and the public interest. This is best done through a routine licensing procedure.

III. Section-by-Section Analysis

General. The proposed rule revises parts of the existing Subpart K of Part 4 by dividing the exemption regulations into the existing case specific exemption provisions (§§ 4.103 through 4.108) and the proposed categorical exemption (from licensing only) provisions (§§4.109 through 4.113). The applicability section (§ 4.101) and the definitions (§ 4.102) pertain to exemption of all small hydroelectric power projects under Subpart K. The general waiver provision in § 4.103(d) is applicable only to case-specific exemptions from licensing. The rule also makes several conforming changes in the provisions established under Order No. 106.

General provisions for exemption § 4.109. Section 4.109 sets forth two sets of criteria under which a project qualifies for exemption from licensing as part of either class of exemptible projects.

The two categories of projects are differentiated by total proposed installed capacity [more than 100 kW to 5 MW under paragraph (a) and 100 kW or less in paragraph (b)] and a variety of other criteria. The Commission has found that exemption of either category of projects will not have a significant effect on the quality of the human environment.

Small hydroelectric power projects that utilize a natural water feature for electric power generation are not eligible for exemption as part of either category.

Section 4.109(c) provides that any small hydroelectric power project in either category is exempted effective 30 days after the date of which the Commission accepts for filing (*see* § 4.31(e)) a Notice of Exemption from licensing. That document identifies both the project and the person developing it and certifies that the project meets the qualifications of one of the categories in § 4.109 and will not affect particular aspects of the environment. The certification requirements in § 4.112 (b) and (c) and § 4.113 (b) and (c) operate in conjunction with the criteria for exemption in § 4.109. The Commission will issue a letter as evidence of the exempt status of each project.

Relationship between notices of exemption and other applications. § 4.110. Section 4.110 provides limitations on the submittal of Notices of Exemption under §§ 4.112 or 4.113 and limitations on permit and license applications for projects exempted under either category in order to establish fixed relationships among various persons who may seek to develop a site. These provisions are similar to the provisions in § 4.106, but are adapted to the categorical exemption context, and are established for the same kind of reasons explained in Docket No. RM80–65 for case-specific exemptions. Section 4.110(a) states that a Notice of Exemption may not be filed under the rule if a permit or license is outstanding or a permit or license application has been filed, unless it is the permittee or licensee who files the Notice of Exemption. However, a permit or license applicant may file a Notice of Exemption if the project is eligible under the categories in §§ 4.109 (a) or (b), the applicant is qualified under § 4.109(d) to file such notice, and no competing application for that project was filed during the entire period provided for protest and intervention in the notice of permit or license application. A qualified exemption applicant may also file a Notice of Exemption or a notice of intent to do so within the notice period for any first-filed permit application. Thirty days after a Notice of Exemption is filed, any outstanding permit is cancelled and any license is deemed terminated for the affected project.

If a project is exempt under the rule, the Commission will not accept an application for license or preliminary

permit according to § 4.110(b). There are exceptions to this rule, however. If the developer of an exempted project fails to get Federal approval to use or occupy public lands or to begin construction on a timely basis, the Commission may revoke the exemption and accept a license application under the terms and conditions of § 4.111. License applications will also be accepted for any project 5 MW or less, if an applicant proposes to develop the project to an installed capacity of at least 7.5 MW, or if the applicant is the holder of any real property interests in non-Federal lands necessary to develop and operate the project and is also a qualified license applicant.

Standard terms and conditions. § 4.111. Section 4.111 sets forth standard terms and conditions of categorical exemption for projects within either category described in § 4.109. Conditions of the categorical exemption are similar to those for case-specific exemption. Under the categorical rule, the owner of an exempted project with more than 100 kW of installed capacity must comply with migratory fish restoration measures prescribed for the future by fish and wildlife agencies at the time of pre-exemption consultation. In addition, if a dam for a project over 100 kW is more than 33 feet in height above streambed, impounds more than 2.5 million cubic meters of water, or is determined to have a high hazard potential, the project must have periodic safety inspections by an independent consultant and is subject to safety inspections and remedial measures that may be required by the Commission's Regional Engineer or other authorized representative, under the Commission's project safety regulations.[7]

The category of projects (100 kW or less) exemptible under § 4.109(b) is covered by certain of the standard terms and conditions, as provided in paragraph (b). The size of the dams and impoundments associated with such projects makes dam safety or fish restoration measures unnecessary as conditions of exemption.

Notice of exemption for projects over 100 kW. Section 4.112 provides that any person with all of the real property interests in any non-Federal lands necessary to develop or operate the project must file a Notice of Exemption in order to obtain exemption from licensing for a project of more than 100 kW. Under § 4.109(d), if only Federal lands are involved, any person may file a notice of exemption. Copies of the Notice of Exemption must be served on the appropriate Federal land management agency, U.S. Fish and Wildlife Service, appropriate state fish and wildlife agencies, the relevant state water resource agencies of EPA, and the relevant state Historic Preservation Officer. Section 4.112(b) requires the person submitting a Notice of Exemption under § 4.112 to obtain agency certification regarding compliance with water quality standards, the absence of significant existing migratory fish populations at the dam, and the absence of adverse impacts on historic sites, endangered species, and critical habitat. Section 4.112 also requires a specific format for the Notice of Exemption, and contains additional requirements for basic information important to the Commission's licensing of non-exempt projects and implementation of §§ 4.104 and 4.110 of Subpart K.

Notice of exemption for projects 100 kW or less. Section 4.113 sets forth the requirements pertaining to the Notice of Exemption for the small hydroelectric power projects with an installed capacity of 100 kW or less, the so-called "micro-hydroelectric" projects exempted under § 4.109(b). The filing and certification requirements are somewhat less than those for projects over 100 kW of installed capacity.

IV. Notice of Additional Finding of No Significant Impact for Projects 100 Kilowatts or Less

The Commission has prepared an Environmental Assessment (EA) of the exemption from the licensing requirements of the Act for a second category of small hydroelectric power projects, that is, those projects 100 kW or less, pursuant to section 408 of the ESA. The Commission gives notice that, on basis of the EA, it has determined that exempting from licensing a category of projects of 100 kW or less is not a major Federal action significantly affecting the quality of the human environment. The EA is incorporated by reference in the Finding of No Significant Impact. Projects in this category of small hydroelectric power projects, described in § 4.109(b) of the final rule, must have a proposed installed capacity of 100 kW or less, utilize for power generation the water power potential of an existing dam, not impede passage of any significant populations of migratory fish at the dam, not adversely affect endangered species or critical habitat, or divert water from the streambed more than 300 feet.

The Commission also believes that, based on its own experience,[8] a categorical exemption for these so-called "micro-hydroelectric" power projects will have minimal environmental impacts, and will not block the passage of fish, dewater long stream segments, or adversely affect historic sites or water quality. Generally, micro-hydroelectric power projects are located on small streams and create small impoundments. Aquatic resources and the flow regime of the stream are not affected by the development or operation of a project with such small generating capacity. Small streams that have sufficient gradient to facilitate small hydropower developments are less likely to have water quality problems. Because of the size of the stream and impoundment, related recreational usage, if any, is normally very limited.

V. Effective Date

This rule is effective February 18, 1982.

In consideration of the foregoing, the Commission amends Part 4 of Chapter I, Title 18 of the Code of Federal Regulations as set forth below, effective February 18, 1982

(Energy Security Act of 1980, Pub. L. 96–294, 94 Stat. 611; Federal Power Act, as amended (16 U.S.C. 792–828c); Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601–2645); and the Department of Energy Organizaton Act (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 142 (1978))

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. Part 4 is amended in the table of contents by revising the titles of §§ 4.101, 4.103, 4.104, and 4.106 and by adding to Subpart K the following section titles, to read as follows:

Subpart K—Exemptions of Small Hydroelectric Power Projects of 5 Megawatts or Less

Sec.

4.101 Applicability.

* * * * *

4.103 General provisions for case-specific exemption.

4.104 Case-specific exemption from licensing: relationships among applications, exemptions, permits, and licenses.

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[7] This condition is written to relate to the Commission's new "Regulations Governing the Safety of Water Power Projects and Project Works," Order No. 122, issued January 21, 1981, 46 FR 9029, January 28, 1981.

[8] For example, FERC Project Nos. 2907, 2987, 3017.

Sec.

4.106 Standard terms and conditions of case-specific exemption from licensing.

* * * ** *

4.109 General provisions for exemption from licensing for certain categories of small hydroelectric power projects.

4.110 Categorical exemption from licensing for small hydroelectric power projects: relationships among applications, exemptions, permits, licenses, and notices of exemption.

4.111 Standard terms and conditions of exemption from licensing for certain categories of small hydroelectric power projects.

4.112 Notice of exemption from licensing for projects of more than 100 kilowatts.

4.113 Notice of exemption from licensing for projects with installed capacity of 100 kilowatts or less.

2. Subpart K of Part 4 is amended by revising § 4.101 and the title and paragraphs (a) and (d) of § 4.103, to read as follows:

Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less

§ 4.101 Applicability.

This subpart provides procedures for exemption on a case-specific or categorical basis from all or part of Part I of the Federal Power Act (Act), including licensing, for small hydroelectric power projects as defined in § 4.102.

* * * * *

§ 4.103 General provisions for case-specific exemption.

(a) *Exemptible projects.* Subject to the provisions of paragraphs (b) and (c) of this section and §§ 4.104 through 4.106, the Commission may exempt on a case-specific basis any small hydroelectric power project from all or part of Part I of the Act, including licensing. Any applications for exemption for a project shall conform to the requirements of §§ 4.107 or 4.108, as applicable.

* * * * *

(d) *Waiver.* In applying for case-specific exemption from licensing, a qualified exemption applicant may petition under § 1.7 of this chapter for waiver of any specific provision of §§ 4.102 through 4.107. The Commission will grant a waiver only if consistent with section 408 of the Energy Security Act of 1980.

3. Subpart K of Part 4 is amended by adding §§ 4.109 through 4.113, to read as follows:

§ 4.109 General provisions for exemption from licensing for certain categories of small hydroelectric power projects.

Subject to the provisions of §§ 4.110 and 4.111 and effective according to paragraph (c) of this section, the Commission exempts from the licensing requirements of Part I of the Act any small hydroelectric power project that conforms to the specifications in either paragraph (a) or (b) of this section.

(a) *Projects more than 100 kilowatts.* Any small hydroelectric power project that has a total proposed installed capacity of more than 100 kilowatts is exemptible if the project:

(1) Utilizes for electric power generation the water power potential of an existing dam;

(2) Does not entail any increase in the normal maximum surface elevation of the impoundment pursuant to repair or reconstruction of a dam;

(3) Does not entail, for the purpose of generating electric power, any change from the prevailing regime of storage and release of water from the impoundment;

(4) Does not entail diversion of water from the waterway for more than 300 feet from the toe of the dam to the point of discharge into the waterway, measured in the thread of the stream;

(5) Does not entail construction of any primary transmission line which:

(i) Has a design capacity of more than 69 kilovolts (kV); or

(ii) Is more than one mile long and located on a new right-of-way;

(6) Utilizes only a dam at which there is not a significant existing population of migratory fish;

(7) Will not cause violation of applicable water quality standards established by any state in which the project is located or, if there are no applicable state water quality standards, by the U.S. Environmental Protection Agency;

(8) Does not entail any construction that would adversely affect any site included in or eligible for inclusion in the National Register of Historic Places;

(9) Does not entail construction or operation that would adversely affect any threatened or endangered species or critical habitat, listed or designated in the regulations of the U.S. Fish and Wildlife Service of the Department of the Interior and the National Marine Fisheries Service of the Department of Commerce; and

(10) Is not part of a licensed water power project.

(b) *Projects 100 kilowatts or less.* Any small hydroelectric power project that has a total proposed installed capacity of not more than 100 kilowatts is exempted if the project:

(1) Utilizes for electric power generation the water power potential of an existing dam;

(2) Utilizes only a dam at which there is not a significant existing population of migratory fish or, if there is a significant population of such fish, a dam that does not obstruct upstream or downstream passage of fish;

(3) Does not entail diversion of water from the waterway for more than 300 feet from the toe of the dam to the point of discharge into the waterway, measured in the thread of the stream; and

(4) Does not entail construction or operation that would adversely affect any threatened or endangered species or critical habitat, listed or designated in the regulations of the U.S. Fish and Wildlife Service of the Department of the Interior and the National Marine Fisheries Service of the Department of Commerce.

(c) *Effective date of exemption.* Unless the Commission indicates otherwise, any small hydroelectric power project in either category of projects specified in paragraphs (a) of (b) is exempted from licensing 30 days after a notice of exemption from licensing for that project, submitted by a qualified exemption applicant and complying with the provisions of § 4.112, is received by the Commission. The Commission will issue a notification of exemption, as effective from that date.

(d) *Who may file a notice of exemption from licensing for categorically exemptible projects.*—(1) *Only Federal lands involved.* If only the rights to use or occupy Federal lands would be necessary to develop and operate a proposed small hydroelectric power project that meets the criteria of paragraph (a) or (b) of this section, any person may file a notice of exemption from licensing for that project under § 4.112 or § 4.113, as appropriate.

(2) *Some non-Federal lands involved.* If real property interests in any non-Federal lands would be necessary to develop and operate a proposed small hydroelectric power project that meets the criteria of paragraph (a) or (b) of this section, any person who has all of the real property interests in non-Federal lands necessary to develop and operate that project, or an option to obtain those interests, may file a notice of exemption from licensing for that project under § 4.112 or § 4.113, as appropriate.

§ 4.110 Categorical exemption from licensing for small hydroelectric power projects: Relationships among applications, exemptions, permits, licenses, and notices of exemption.

For purposes of categorical exemption from licensing under this subpart, the Commission will treat preliminary permit and license applications, preliminary permits, licenses, exemptions from licensing, and

applications for exemption from licensing that are related to any small hydroelectric power project eligible for exemption under the categories described in § 4.109, as follows:

(a) *Limitations on submission and acceptance of notices of exemption.*—(1) *Unexpired permit or license.* If there is an unexpired preliminary permit or license in effect for a project, the Commission will accept a notice of exemption from licensing for any project eligible for exemption under any category described in § 4.109 only if the person filing the notice is the permittee or licensee. If the notice of exemption is submitted by a permittee, the permit will be deemed cancelled as of the effective date of the exemption. If the notice of exemption is filed by a licensee, the license will be deemed terminated as of the effective date of the exemption.

(2) *Pending permit, license, or exemption application.*—(i) *General Rule.* Except as permitted under clauses (ii) and (iii), the Commission will not accept a notice of exemption from licensing for any project eligible for exemption under any category described in § 4.109 if an application for preliminary permit or license for that project, or an application for exemption of that project from licensing (see § 4.107), has been accepted for filing.

(ii) *Exception.* If a preliminary permit application for a project has been accepted for filing, the Commission will accept a notice of exemption of that project from licensing, or a notice of intent to submit such an application conforming to the requirements of § 4.33(b) of this chapter, submitted not later than the last date for filing protests and petitions to intervene prescribed in the public notice issued for the initial preliminary permit application under § 4.31(c)(2) of this chapter. If a notice of intent is filed under this clause, the subsequent notice of exemption must be submitted not later than 60 days after the last date for filing protests and petitions prescribed in the public notice of the permit application.

(iii) *Exception.* If an application for preliminary permit, license, or exemption from licensing has been accepted for filing for a project eligible for exemption under any category described in § 4.109, the Commission will accept a notice of exemption from licensing for that project, if:

(A) The person filing the notice of exemption is the applicant for preliminary permit, license, or exemption from licensing;

(B) No competing application, whether for preliminary permit, license, or exemption from licensing, has been accepted for filing for that project;

(C) The last date for filing protests or petitions to intervene, prescribed in the public notice issued for the initial permit or license application under § 4.31(c)(2) of this chapter, has passed; and

(D) No notice of intent to file a competing preliminary permit or license application for that project has been filed in accordance with § 4.33(b) of this chapter;

(iv) *Withdrawal of pending applications.* If a notice of exemption from licensing complying with § 4.112 or § 4.113 is filed under paragraph (a)(2)(iii) of this section, any pending application for preliminary permit, license, or exemption from licensing filed by a qualified exemption applicant will be deemed withdrawn as of the effective date of the exemption.

(b) *Limitations on submissions and acceptance of permit or license applications.*—(1) *General rule.* Except as permitted under paragraph (b)(2) of this section or § 4.111(a) (3) and (5), the Commission will not accept a preliminary permit or license application for any small hydroelectric power project that is exempt from licensing pursuant to § 4.109.

(2) *Exceptions.* (i) If a project is exempt from licensing pursuant to § 4.109, the Commission will consider a license application submitted by any qualified license applicant that proposes to develop at least 7.5 megawatts in the exempted project.

(ii) If a project is exempt from licensing pursuant to § 4.109 and real property interests in any non-Federal lands would be necessary to develop and operate the project, any person who is both a qualified license applicant and has any of the necessary real property interests in such non-Federal lands may submit a license application for that project. If a license application is submitted under this clause, any other qualified license applicant may submit a competing license application in accordance with § 4.33 of this part.

§ 4.111 Standard terms and conditions of exemption from licensing for certain categories of small hydroelectric power projects.

(a) *For projects more than 100 kilowatts.* Any small hydroelectric power project exempted from licensing under § 4.109(a) is subject to the following standard terms and conditions:

(1) *Article 1.* The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(2) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with migratory fish restoration measures, including both restoration of historically present species and introduction of species similar but not identical to those historically present, prescribed by any fish and wildlife agency during the pre-exemption consultation required under 18 CFR § 4.112(b)(5).

(3) *Article 3.* The Commission may accept a license application submitted by any qualified license applicant and revoke this exemption if actual construction or development of any proposed generating facilities has not begun within 18 months, or been completed within four years, from the effective date of this exemption. If an exemption is revoked, the Commission will not accept a subsequent notice of exemption from licensing or application for exemption for the project within two years of the revocation.

(4) *Article 4.* This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

(5) *Article 5.* This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal land agencies. The Commission may accept a license application submitted by any qualified license applicant and revoke this exemption if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the effective date of this exemption.

(6) *Article 6.* Any exempted small hydroelectrical power project that utilizes a dam which is more than 33 feet in height above streambed, as defined in 18 CFR 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has high hazard potential, as defined in 18 CFR 12.31(b), is subject to the following provisions of 18 CFR Part 12:

(i) Section 12.4(b)(2) (i), (ii), (iii)(B), (iv), and (v);

(ii) Section 12.4(c); and

(iii) Subpart D.

For the purposes of applying these provisions of 18 CFR Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

(b) *For projects 100 kilowatts or less.* Any small hydroelectric power project exempted from licensing under § 4.109(b) is subject to the standard terms and conditions set forth in paragraphs (a) (1), (3), (4) and (5) of this section.

§ 4.112 Notice of exemption from licensing for projects with installed capacity of more than 100 kilowatts.

(a) *General requirement.* Any person who meets the requirements of § 4.109(d) and files a notice of exemption from licensing for any small hydroelectric power project described under § 4.109(a) must submit:

(1) The original and 4 copies of the notice of exemption described in paragraph (c) of this section; and

(2) Proof of service of a copy of the notice of exemption on:

(i) The U.S. Fish and Wildlife Service and the fish and wildlife agency for each state in which the project is located;

(ii) The state Historic Preservation Officer for each state in which the project is located;

(iii) The appropriate Federal land management agency, if Federal lands are involved; and

(iv) The state water resource agency for each state in which the project is located or, if there are no applicable state water quality standards, the U.S. Environmental Protection Agency.

(b) *Certifications.* As a basis for certifying to the nature and effects of a small hydroelectric power project under paragraph (c)(5) of this section, a person filing a notice of exemption must:

(1) Obtain certification from the state water resource agency for each state in which the project is located or, if there are no applicable state water quality standards, from the U.S. Environmental Protection Agency, that the project will not cause a violation of any applicable water quality standards;

(2) Obtain certification from the U.S. Fish and Wildlife Service and the fish and wildlife agency for each state in which the project is located that there is not a significant existing population of migratory fish at any project dam;

(3) Obtain certification from the state Historic Preservation Officer of each state in which the project is located or obtain an independent field survey and survey of the literature conducted by an archaeologist approved by each applicable state Historic Preservation Officer, with respect to whether the project construction will entail adverse impacts on sites included in or eligible for inclusion in the National Register of Historic Places;

(4) Obtain certification from the U.S. Fish and Wildlife Service or obtain an independent field survey and survey of the applicable literature conducted by a biologist approved by the U.S. Fish and Wildlife Service, with respect to whether project construction or operation would adversely affect any endangered or threatened species or critical habitat listed or designated in the regulations of the U.S. Fish and Wildlife Service of the Department of the Interior or the National Marine Fisheries Service of the Department of Commerce; and

(5) Consult with the U.S. Fish and Wildlife Service and the state fish and wildlife agency for each state in which the project is located, with respect to any future migratory fish restoration program affecting the exemptible project, and obtain a description of any such measure with which the project must comply under § 4.111(b). Any such description obtained pursuant to this subparagraph must be attached to the notice of exemption.

(c) *Contents.* The notice of exemption from licensing required by this section must conform to the following format:

Before the Federal Energy Regulatory Commission

Notice of Exemption of Small Hydroelectric Power Project From Licensing

(1) [Name of filing party or parties] notifies [notify] the Federal Energy Regulatory Commission that the [name of the project], a small hydroelectric power project as defined in 18 CFR § 4.102, is exempt from licensing under the terms of 18 CFR § 4.109 through § 4.111. [If applicable: The project is currently licensed as FERC Project No. ———].

(2) The location of the project is:
[State or territory] ———
[County]———
[Township or nearby town] ———
[River or stream] ———
[River basin]———

(3) The exact name, business address, and telephone number of the filing party or parties are:

———

———

(4) The project includes the following features:

(i) *Dams:* [For each existing dam, identify the dam; state the date on which construction was completed and state both the dam's length, height above streambed, as defined in 18 CFR 12.30, and the gross storage capacity of the related impoundment].

(ii) *Powerplants:* [For each powerplant: Identify the powerplant; state whether it is existing or proposed; state the hydraulic head; state the installed capacity in kilowatts and average annual generation in kilowatt-hours for any existing electric generating capacity; and state the proposed total installed capacity in kilowatts and the estimated average annual generation in kilowatt-hours for the proposed total installed capacity].

(iii) *Average stream flow:* The average annual stream flow is [———] cubic feet per second.

(5) It is certified that the small hydroelectric power project conforms to the specifications set forth in § 4.109(a) of the Commission's regulations and that [name of filing party or parties] has [have] complied with § 4.112(b) of the Commission's regulations, including the following:

(i) The [list each applicable state water resource agency or U.S. Environmental Protection Agency] has [have] certified that the construction, operation, and maintenance of the project will not cause a violation of any applicable water quality standards.

(ii) The U.S. Fish and Wildlife Service [identify which office] and [list each applicable state fish and wildlife agency] has [have] certified that there is not a significant existing population of migratory fish at any project dam.

(iii) The state Historic Preservation Officer or an approved archaeologist has certified that the proposed small hydroelectric power project does not entail any construction that would adversely affect any site included in or eligible for inclusion in the National Register of Historic Places.

(iv) The U.S. Fish and Wildlife Service [identify which office] or an approved biologist has certified that the proposed small hydroelectric power project does not entail construction or operations that would adversely affect any threatened or endangered species or critical habitat listed or designated in the regulations of the U.S. Fish and Wildlife Service of the Department of the Interior or the National Marine Fisheries Service of the Department of Commerce.

(v) [List the U.S. Fish and Wildlife Service, identifying which office, and/or each state fish and wildlife agency, as appropriate] has [have] [not] prescribed migratory fish restoration measures as a condition of the exemption. [A description of any such measure must be attached].

(6) [Signature of filing party or parties under § 1.15 of this chapter; subscription and verification under § 1.16 of this chapter].

§ 4.113 Notice of exemption from licensing for projects with installed capacity of 100 kilowatts or less.

(a) *General requirement.* Any person who meets the requirements of § 4.109(d) and files a notice of exemption from licensing for any small hydroelectric power project described in § 4.109(b) must submit:

(1) An original and 4 copies of the notice of exemption described in paragraph (c) of this section; and

(2) Proof of service of a copy of the notice of exemption on appropriate fish and wildlife agencies and any state or Federal resource agency consulted.

(b) *Certifications.* As a basis for certifying to the nature and effects of a

small hydroelectric power project under paragraph (c)(5) of this section, a person filing a notice of exemption must:

(1) Obtain certification from the U.S. Fish and Wildlife Service or obtain an independent field survey and a survey of the applicable literature conducted by a biologist approved by the U.S. Fish and Wildlife Service, with respect to whether project construction or operation would adversely affect any endangered or threatened species or critical habitat listed or designated in the regulations of the U.S. Fish and Wildlife Service of the Department of the Interior or the National Marine Fisheries Service of the Department of Commerce; and

(2) Obtain from the U.S. Fish and Wildlife Service and the fish and wildlife agency for each state in which the project is located either that there is not a significant existing population of migratory fish at the project dam or, if there is a significant population of such fish, that the project dam does not constrict the passage of such fish.

(c) *Contents.* The notice of exemption from licensing required by this section must conform to the following format:

Before the Federal Energy Regulatory Commission

Notice of Exemption of Small Hydroelectric Power Project From Licensing

(1) [Name of filing party or parties] notifies [notify] the Federal Energy Regulatory Commission that the [name of the project], a small hydroelectric power project as defined in 18 CFR 4.102, is exempt from licensing under the terms of 18 CFR 4.109 through 4.111. [If applicable: The project is currently licensed as FERC Project No. ———.]

(2) The location of the project is:

[State or territory] ———
[County] ———
[Township or nearby town] ———
[River or stream] ———

(3) The exact name, business address, and telephone number of the filing party or parties are:

———

———

(4) The project includes the following features:

(i) *Dams:* [For each existing dam, identify the dam; state the completion date of dam construction, the dam's height above streambed, and the gross storage capacity of the related impoundment, as defined in 18 CFR 12.30.]

(ii) *Powerplants:* [For each power plant: identify the power plant, state whether the powerplant is existing or proposed; state the hydraulic head, the existing installed and proposed total installed capacity in kilowatts and the average annual generation in killowatt-hours for any existing facility and the proposed total electric generating capacity.

(iii) *Average stream flow:* The average annual streamflow is [———] cubic feet per second.

(5) It is certified that the small hydroelectric power project conforms to the specifications set forth in § 4.109(b) of the Commission's regulations and that [name of the filing party or parties] has [have] complied with § 4.113(b) of the Commission's regulations, including the following:

(i) The U.S. Fish and Wildlife Service [identify which office] or an approved biologist has certified that the proposed small hydroelectric power project does not entail construction or operations that would adversely affect any threatened or endangered species or critical habitat listed or designated in the regulations of the U.S. Fish and Wildlife Service of the Department of the Interior or the National Marine Fisheries Service of the Department of Commerce;

(ii) The U.S. Fish and Wildlife Service [identify which office] and [list each applicable state fish and wildlife agency] has [have] certified that there is not a significant population of migratory fish at the project dam or, if there is a significant population of such fish, the project dam does not obstruct the passage of the migratory fish.

(6) [Signature of filing party or parties under § 1.15 of this chapter; subscription and verification under § 1.16 of this chapter.]

§ 4.102 [Amended]

4. Section 4.102(l) is amended by inserting after the words "after the date of" the words "notice of exemption or."

§ 4.104 [Amended]

5. Section 4.104 is amended by revising the title to read *"Case-specific exemption from licensing: relationships among applications, exemptions, permits and licenses."* and by removing from the first sentence the words "this subpart" and substituting in lieu thereof the words "case-specific exemption under §§ 4.103 through 4.107".

§ 4.105 [Amended]

6. Section 4.105 is amended in the first sentence of paragraph (b) (6) by removing the words "In granting an exemption from licensing," and substituting in lieu thereof the words "In approving any application for exemption from licensing,".

7. Section 4.106 is amended by revising the title of the section, by revising the introductory text, and by revising the second sentence of paragraph (c) to read:

§ 4.106 Standard terms and conditions of case-specific exemption from licensing.

Any case-specific exemption from licensing granted for a small hydroelectric power project is subject to the following standard terms and conditions:

* * * * *

(c) *Article 3.* * * * If an exemption is revoked, the Commission will not accept a subequent application for exemption or a notice of exemption from licensing within two years of the revocation.

* * * * *

PART 375—THE COMMISSION

7. Section 375.308 is amended by revising paragraphs (n) and (o) and adding a new paragraph (ss), to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

* * * * *

(n) Issue deficiency letters regarding electric rate schedule filings, refund reports, corporate applications for the sale of facilities with respect to interlocking directorates, exemption applications and notices of exemption filed under Subparts J or K of Part 4 of this chapter, and applications filed under Part I of the Federal Power Act.

(o) Reject a rate filing, an application filed under Part I of the Federal Power Act, an application or other filing under section 405 of the Public Utility Regulatory Policy Act of 1978, or a non-complying notice of exemption from licensing filed under §§ 4.109 through 4.113 of this chapter, unless accompanied by a request for waiver in conformity with § 1.14(a)(2) of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations and orders.

* * * * *

(ss) Issue notification of exemption from licensing for any small hydroelectric power project within the categories of exemptible projects described in § 4.109 of this chapter, pursuant to filing of a notice of exemption from licensing.

[FR Doc. 82-2395 Filed 1-28-82; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76 (New York-1); Order No. 204]

High-Cost Gas Produced From Tight Formations; New York

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or

costs. Under section 107(c)(5) the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the New York State Department of Environmental Conservation, Bureau of Mineral Resources that the Medina Group be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective January 22, 1982.

FOR FURTHER INFORMATION CONTACT: Peter Roidakis, (202) 357–8307 or John Roy Johnson, (202) 357–8731.

SUPPLEMENTARY INFORMATION:

Issued: January 22, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include portions of the Medina Group in New York as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued October 15, 1981 (46 FR 51618, October 21, 1981)[1] based on a recommendation by the New York State Department of Environmental Conservation, Bureau of Mineral Resources (New York) in accordance with § 271.703(c) that portions of the Medina Group be designated as a tight formation.

Evidence submitted by New York supports the assertion that the Medina Group meets the guidelines contained in § 271.703(c)(2). The Commission adopts the New York recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the 30-day publication period.

(Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, (5 U.S.C. 553))

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective January 22, 1982.

[1] Comments were invited and one favorable comment was received. No party requested a public hearing and no hearing was held.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(66) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) * * *

(66) *Medina Group in New York. RM79–76 (New York–1)*—(i) *Delineation of formation.* The Medina Group is found in Chautauqua and Cattaraugus Counties, New York (and is equivalent to the U.S. Geological Survey's Albion Group). The Medina Group consists of the Grimsby Sandstone Formation, the Power Glen Shale Formation (also known as the Cabot Head Shale Formation), and, where present, the Whirlpool Sandstone Formation. The Medina Group is bounded by the overlying Thorold Formation, where present. Where the Thorold Formation is not present, the Medina group is overlaid by the Reynales Limestone Formation (also know as the "Packer Shell"). The Queenston Shale Formation is the underlying boundary of the Medina Group. Excluded from the delineated Medina Group are any Medina gas storage areas, including buffer zones, or any area within "existing" Medina fields that have been substantially developed absent an incentive price.

(ii) *Depth.* The average depth to the top of the Medina Group is approximately 3,850 feet with a range to the top of the formation of 1,700 to 6,000 feet. The average pay thickness of the formation is 55 feet.

[FR Doc. 82–2361 Filed 1–28–82; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76 (Colorado–20); Order No. 206]

High-Cost Gas Produced From Tight Formations

January 22, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that the Upper Mancos Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective January 22, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations to include the Upper Mancos Formation in Rio Blanco County, Colorado, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued October 19, 1981 (46 FR 52126, October 26, 1981,[1] based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703(c) that the said formation be designated as a tight formation.

Evidence submitted by Colorado supports the assertion that the Upper Mancos Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Colorado recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Natural Gas Policy Act of 1978, 15 U.S.C. 3101–3342; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter Title 18, Code of Federal Regulations, is amended as set forth below, effective January 22, 1982.

[1] Comments were invited and none were received. No party requested a public hearing and no hearing was held.

By the Commission.
Lois D. Cashell,
Acting Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(65) to read as follows:

§ 271.703 Tight formations

* * * * *

(d) * * *

(65) *The Upper Mancos Formation in Colorado.* RM79–76 (Colorado—20). (i) *Delineation of formation.* The Upper Mancos Formation is found in Rio Blanco County, Colorado, in Townships 2 and 3 South, Ranges 100 and 101 West, 6th P.M.

(ii) *Depth.* The Upper Mancos Formation is defined as being between the base of the Mesaverde Formation and the top of the Lower Mancos Formation. The average depth to the top of the Upper Mancos Formation is 1,800 feet.

[FR Doc. 82–2363 Filed 1–28–82; 8:45 am]
BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76 (Colorado-17); Order No. 205]

High-Cost Gas Produced From Tight Formations

January 22, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that the Mesaverde Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective January 22, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations to include the Mesaverde Formation in Colorado as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued September 21, 1981 (46 FR 47239, September 25, 1981) [1] based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703(c) that the said formation be designated as a tight formation.

Evidence submitted by Colorado supports the assertion that the Mesaverde Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Colorado recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3101–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective January 22, 1982.

By the Commission.
Lois D. Cashell,
Acting Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(64) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) * * *

(64) *Mesaverde Formation in Colorado.* RM79–76 (Colorado-17). (i) *Delineation of formation.* The Mesaverde Formation is found in Garfield County, Colorado, in Township 6 South, Range 93 West, 6th P.M., Sections 3 through 10, 15 through 22, 27 through 34; Township 6 South, Range 94 West, 6th P.M., Sections 1 through 3, 7 through 36; Township 6 South, Range 95 West, 6th P.M., Sections 25 through 36; Township 7 South, Range 94 West, 6th P.M., Sections 1 through 9, 16 through 18; Township 7 South, Range 95 West, 6th P.M., Sections 1 through 24, 27 through 34; Township 7 South, Range 96 West, 6th P.M., Sections 1 through 36; Township 8 South, Range 96 West, 6th P.M., Sections 1 through 6.

(ii) *Depth.* The Mesaverde Formation is defined as that formation encountered between the base of the Wasatch Formation (Tertiary) and the top of the Mancos shale. The average depth to the top of the Mancos Formation is 4,475 feet.

[FR Doc. 82–2362 Filed 1–28–82; 8:45 am]
BILLING CODE 6717–01–M

[1] Comments were invited and one favorable comment was received. No party requested a public hearing and no hearing was held.

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18 CFR Part 271

[Docket No. RM79–76 (Utah–4); (Order No. 203)]

High-Cost Gas Produced From Tight Formations

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5) the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Utah Board Oil, Gas and Mining that the Morrison Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective January 22, 1982.

FOR FURTHER INFORMATION CONTACT: Peter Roidakis, (202) 357–8307 or Victor Zabel, (202) 357–8616.

Order No. 203

Final Rule

Issued: January 22, 1982.

In the matter of High-Cost Gas Produced From Tight Formations, Docket No. RM79–76 (Utah–4).

The Commission hereby amends § 271.703(d) of its regulations to include the Morrison Formation in Utah as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued September 11, 1981 (46 FR 46142, September 17, 1981) [1] base on a recommendation by the State of Utah Board of Oil, Gas and Mining (Utah) in accordance with §271.703(c) that the Morrison Formation be designated as a tight formation.

Evidence submitted by Utah supports the assertion that the Morrison Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Utah recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, (42 U.S.C. 7101 *et seg.*); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, (5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I Title 18, *Code of Federal Regulations*, is amended as set forth below, effective January 22, 1982.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d) (67) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) * * *

(67) *Morrison Formation in Utah.* RM 79–76 (Utah–4)

(i) Delineation of formation. The Morrison formation is found is the Book Cliffs area of Grand, Emery, and Uintah Counties, Utah, in the area of Townships 15 South through 20 South, and Ranges 17 East through 24 East.

(ii) *Depth.* The average depth to the top of the Morrison Formation is 6,315 feet. The Morrison Formation averages 600 feet in thickness with the vertical limits defined by the Dakota Formation above and the Entrada Formation below.

[FR Doc. 82–2394 Filed 1–28–82; 8:45 am]

BILLING CODE 6717–01–M

[1] Comments were invited on the proposed rule and none were received. No party requested a hearing and no hearing was held.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

Animal Drugs, Feeds, and Related Products; Selenium Disulfide Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by National Pharmaceutical Mfg. Co. providing for use of a selenium disulfide suspension on dogs as a shampoo and as an agent for removing skin debris, and to add the sponsor to the list of sponsors of approved NADA's.

EFFECTIVE DATE: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Food and Drug Administration, Bureau of Veterinary Medicine (HFV–112), 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: National Pharmaceutical Mfg. Co., a Division of Barre-National, Inc., 7205 Windsor Blvd., Baltimore, MD 21207, filed an NADA (120–646) providing for use of a selenium disulfide suspension on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses. This application concerns a product similar to one reviewed by the National Academy of Sciences/National Research Council (NAS/NRC), approval of which is reflected in the regulations in 21 CFR 524.2101. This application is approved on the basis of generic equivalence to the NAS/NRC reviewed product. It conforms to the NAS/NRC panel recommendations published in the **Federal Register** of September 5, 1970 (35 FR 14168). The Bureau of Veterinary Medicine has determined that bioequivalency data are not required in this product. The NADA is approved and the regulations are amended to reflect the approval.

In addition, the regulations do not include the firm in the list of sponsors of approved NADA's in 21 CFR 510.600(c). The regulation is amended appropriately.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2), to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
. . . . .	
National Pharmaceutical Mfg. Co., a Division of Barre-National, Inc., 7205 Windsor Blvd., Baltimore, MD 21207	000570
. . . . .	

(2) * * *

Drug labeler code	Firm name and address
. . . . .	
000570	National Pharmaceutical Mfg. Co., a Division of Barre-National, Inc., 7205 Windsor Blvd., Baltimore, MD 21207.
. . . . .	

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In part 524, § 524.2101 is amended by revising paragraph (b)(1), to read as follows:

§ 524.2101 Selenium disulfide suspension.

* * * * *

(b) *Sponsors.* (1) See Nos. 000570 and 050604 in § 510.600(c) of this chapter for use as in paragraph (c)(2)(i) of this section.

* * * * *

Effective date. January 29, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 21, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-2248 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Copper Naphthenate Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) held by Fort Dodge Laboratories providing revised labeling for use of copper naphthenate solution as an aid in treating thrush (degenerative hoof disease) in horses.

EFFECTIVE DATE: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Louis L. Nangeroni, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Division of American Home Products Corp., Fort Dodge, IA 50501, is sponsor of an NADA (12-991) providing for use of a 37.5 percent copper naphthenate solution. The firm has filed a supplemental NADA providing revised labeling eliminating all indications for use of the drug except the treatment of thrush (degenerative hoof disease) in horses and ponies. The regulation reflecting approval of the NADA (21 CFR 524.463) is amended to reflect approval for this use only.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 524 is amended by revising § 524.463 to read as follows:

§ 524.463 Copper naphthenate solution.

(a) *Specifications.* The drug contains 37.5 percent copper naphthenate in a suitable solvent.

(b) *Sponsor.* See Nos. 000856 and 017135 in § 510.600(c) of this chapter.

(c) *Conditions of use—Horses and ponies*—(1) *Amount.* Apply daily to affected hooves until fully healed.

(2) *Indications for use.* As an aid in treating horses and ponies for thrush caused by organisms susceptible to copper naphthenate.

(3) *Limitations.* Use on horses and ponies only. Remove debris and necrotic material before applying. Avoid contact around eyes. Do not use on animals that are raised for food production. Do not contaminate feed. Do not allow runoff of excess drug into hair because contact with the drug may cause some hair loss.

Effective date. This amendment is effective January 29, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 21, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-2249 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Henwood Feed Additives, Inc., providing for use of 0.48- and 2.4-gram-per-pound hygromycin B premixes for making complete swine feeds for control of large roundworm, nodular worm, and whipworm infections, and for making complete chicken feeds for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Henwood Feed Additives, Inc., 211 Western Rd., Box 577, Lewisburg, OH 45338, is the sponsor of an NADA (110-439) providing for use of 0.48- and 2.4-gram-per-pound hygromycin B premixes for making complete swine and chicken feeds. The complete swine feed is used as an aid in controlling large roundworm, nodular worm, and whipworm infections. The complete chicken feed is used as an aid in the control of large roundworms, cecal worms, and capillary worms. The NADA was filed by Elanco Products Co. for the sponsor, Henwood Feed Additives, Inc. Approval of the NADA is based on safety and effectiveness data contained in Elanco's approved NADA's 10-918 and 11-948. Elanco has authorized use of the data in these NADA's to support this application. This approval does not change the approved use of the drug. Consequently, approval of the NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval

policy (42 FR 64367; December 23, 1977), approval of NADA 110–439 has been considered equivalent to a supplemental approval which does not require reevaluation of the basic safety and effectiveness data found in NADA's 10–918 and 11–948. NADA 110–439 is approved, and the regulations are amended to reflect the approval. Satisfactory chemistry, manufacturing, and control data and information were submitted.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) (formerly 5.1; see 46 FR 26052; May 11, 1981) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.274 is amended by adding paragraphs (a)(5) and by revising the first entry in paragraphs (e)(1) (i) and (ii), to read as follows:

§ 558.274 Hygromycin B.

(a) * * *

(5) Premix levels of 0.048 and 2.4 grams per pound granted to sponsor 026186 in § 510.600(c) of this chapter for use in chickens as in paragraph (e)(1)(i) of this section and in swine as in paragraph (e)(1)(ii) of this section.

* * * * *

(e) * * *

(1) * * *

Hygromycin B grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 8 to 12		Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).	Withdraw 3 days before slaughter	000986, 022422, or 026186.
*	*	*	*	*
(ii) 12		Swine; Control of infestation of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*), and whipworms (*Trichuris suis*).	Withdraw 15 days before slaughter	000986, 043733, 011490, 016968, 022422, or 026186.
*	*	*	*	*

* * * * *

Effective date. This amendment is effective January 29, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 21, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-2247 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Cadco, Inc., providing for safe and effective use of a premix containing 5 grams per pound each of tylosin and sulfamethazine for making complete swine feeds.

EFFECTIVE DATE: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322, is the sponsor of supplemental NADA 99–561 submitted on its behalf by Elanco Products Co. The supplemental NADA provides for use of a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine for making complete swine feeds used to maintain weight gains and feed efficiency in the presence of atrophic rhinitis, lower the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevent swine dysentary (vibrionic), and control swine pneumonias caused by bacterial pathogens *Pasteurella multocida* and/or *Corynebacterium pyogenes).*

Approval of the application is based on safety and effectiveness data contained in Elanco's approved NADA's 12–491 and 41–275. Use of the data in NADA's 12–491 and 41–275 to support this application has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this supplemental NADA poses no increased human risk from exposure to residues of the animal drug. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this supplement is a Category II supplemental NADA which does not require reevaluation of the safety and effectiveness data in NADA's 12–491 or 41–275. The supplement is approved and the regulations are amended accordingly. The regulations are also amended to reflect that Cadco, Inc., also currently holds approval for use of a tylosin-sulfamethazine premix containing 10 grams per pound of each drug. The conditions of use of the 5- and 10-gram-per-pound premixes are identical.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch

(HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 by removing drug labeler code "011490" from paragraph (b)(3) and by adding it to revised paragraph (b)(8), to read as follows:

§ 558.630 Tylosin and sulfamethazine.

* * * * *

(b) * * *

(8) To 011490 and 026186: 5 or 10 grams per pound each, paragraph (f)(2)(ii) of this section.

* * * * *

Effective date. January 29, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 25, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-2292 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 300

[Docket No. R-82-958]

General, List of Attorneys-in-Fact

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending Paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in Paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: March 11, 1982.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

PART 300—GENERAL

§ 300.11 [Amended]

Paragraph (c) of § 300.11 is amended by adding the following name to the current list of attorneys-in-fact:

Name	Region
Victoria L. Arrington	Chicago, IL

(Sec. 309(d) of the National Housing Act, 12 U.S.C. sec. 1723a(d) and sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. sec. 3535(d))

Issued at Washington, D.C., December 29, 1981.

R. Frederick Taylor,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 82-2453 Filed 1-28-82; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 882 and 888

[Docket No. R-82-742]

Section 8 Housing Assistance Payments Program; Existing Housing and Fair Market Rents and Contract Rent Automatic Annual Adjustment Factors; Correction of Rule Providing for Publication of Automatic Annual Adjustment Factors

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

ACTION: Notice of correction.

SUMMARY: This technical correction is necessary in order to accomplish a change in the method of publishing contract rent Automatic Annual Adjustment Factors under the Section 8 Housing Assistance Payments Programs.

EFFECTIVE DATE: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street, SW., Washington, D.C. 20410. His telephone number is (202) 755-6207 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On December 20, 1979 (44 FR 75383) HUD issued an interim rule which changed the method of publishing the Contract Rent Automatic Annual Adjustment Factors under the Section 8 Housing Assistance Payments Program. That change was intended to provide for publication of the Factors by notice in the **Federal Register** rather than as amendments to Schedule C of Part 888. However, the rule inadvertently failed to delete Schedule C and various references to Schedule C in Chapter VIII. Under Federal Register codification procedures this deletion is necessary to permit publication of the Factors by notice.

Accordingly, the Interim Rule (44 FR 75383) is corrected by amending 24 CFR Chapter VIII as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS—EXISTING HOUSING

§ 882.108 [Corrected]

(1) In § 882.108(a)(i) (A) remove "* * * Schedule C * * *" in line 4.

§ 882.411 [Corrected]

(2) In § 882.411(a)(1) remove "* * * * Schedule C * * *" in line 3.

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

§ 888.202 [Corrected]

(3) In § 888.202 remove "* * * Schedule C * * *" at the beginning of the section.

§ 888.203 [Corrected]

(4) In § 888.203(a) remove at the end of the first paragraph "* * * as indicated in Schedule C."

(5) In Part 888 at the end of the part remove "Schedule C Contract Rent Automatic Annual Rent Adjustment Factors" and the editorial note thereto.

(Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., January 26, 1982.

Burton Bloomberg,

Associate General Counsel for Regulations and Administrative Law.

[FR Doc. 82-2452 Filed 1-27-82; 2:24 pm]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Approval of the Abandoned Mine Reclamation Plan for the State of Missouri under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: On September 11, 1981, the State of Missouri submitted to OSM its proposed abandoned mine land reclamation plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the Plan submission, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the Missouri Abandoned Mine Reclamation Plan meets the requirements of both SMCRA and the Secretary's Regulations. Accordingly, the Assistant Secretary has approved the Missouri Plan.

EFFECTIVE DATE: This approval is effective January 29, 1982.

ADDRESSES: Copies of the full text of the Missouri Reclamation Plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Missouri State Office, 818 Grand Avenue, Kansas City, Missouri 64106

Missouri Department of Natural Resources, Land Reclamation Commission, P.O. Box 1368, 1026 "D" Northeast Dr., Jefferson City, Missouri 65102

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 "L" Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Lands, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone (202) 343–7951.

SUPPLEMENTARY INFORMATION:

General Background of the Abandoned Mine Land Reclamation Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State reclamation plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49947–49949, October 25, 1978). Under those regulations, the Director is required to review the plan, solicit and consider comments from other Federal agencies and the public. If the plan is disapproved the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan by the Secretary, the State may submit to OSM, on an annual basis, an application for funds to be expended in the State on specific reclamation projects as necessary to implement the State reclamation plan as approved. Annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T to 30 CFR Chapter VII. Subchapter T consists of Parts 900 through 950. Provisions relating to Missouri are found in 30 CFR Part 925.

Background on the Missouri Abandoned Mine Plan Submission

On March 27, 1979, a cooperative agreement between the Missouri Department for Natural Resources, Land Reclamation Commission and the OSM was approved. The purpose of this agreement was to assure that information required for the preparation of the Missouri Abandoned Mine Reclamation Plan would be assembled.

On September 11, 1981, Missouri submitted its proposed State Abandoned Mine Land Reclamation Plan to OSM.

On September 28, 1981, representatives of the Missouri Department of Natural Resources, Land Reclamation Commission and OSM discussed possible amendments to the proposed Plan. After the Missouri Attorney General clarified several issues, OSM determined that no amendments to the Plan are necessary.

All documents mentioned above are available for public inspection at OSM and the Missouri Department of Natural Resources at the addresses listed above under "addresses." Notice of receipt of the submission initiating Plan review was published on November 3, 1981 (45 FR 54572–54574). The announcement requested public comments. It was determined by the OSM Regional Director that a public hearing was not necessary because the public had been provided adequate notice and opportunity to be heard on the Plan and further that the record did not reflect any major unresolved controversy. On December 21, 1981, the OSM State Director and on December 22, 1981, the Assistant Director for Program Operations and Inspection recommended to the Director of OSM that the Secretary approve the Missouri Reclamation Plan.

Assistant Secretary's Findings

1. In accordance with Section 405 of SMCRA the Assistant Secretary finds that Missouri has submitted a Plan for reclamation of abandoned mines and has the ability and necessary State

legislation to implement the provisions of Title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.13 that:

(a) The Department of Natural Resources of the State of Missouri has the legal authority, policies and administrative structure necessary to carry out the Plan;

(b) The Plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) The State has an approved regulatory program; and

(d) The Plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary has solicited and considered views from the general public, as well as other Federal agencies having an interest in the Plan as required by 30 CFR 884.13(a)(2). After the required 30 day comment period, initiated (by 45 FR 54572–54574) on November 3, 1981, no comments were received.

Additional Findings

The Office of Surface Mining has examined this rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981), and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Missouri Abandoned Mine Land Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures and organization of the State's Abandoned Mine Land Reclamation Program. Therefore, under the Department of Interior Manual DM 516.2.3(A)(1), the Assistant Secretary's decision on the Missouri Plan is categorically excluded from the National Environmental Policy Act requirements. As a result, no environmental assessment or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also, an environmental analysis or an EIS will be prepared for the approval of grants for the abandoned mine lands reclamation projects under 30 CFR Part 886.

The good cause for making this rule effective upon date of publication is (1) OSM desires to minimize the time between the approval of the Title V regulatory program and the Title IV State reclamation program, and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

Dated: December 30, 1981.

J. S. Griles,

Acting Director, Office of Surface Mining.

Dated: January 22, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 925—MISSOURI

Therefore, Part 925 is amended by adding § 925.20 to read as follows:

§ 925.20 Approval of the Missouri Abandoned Mine Reclamation Plan.

The Missouri Abandoned Mine Reclamation Plan as submitted on September 11, 1981, is approved. Copies of the approved Plan are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Missouri State Office, 818 Grand Avenue, Kansas City, Missouri 64106

Missouri Department of Natural Resources, Land Reclamation Commission, P.O. Box 1368, 1026 D Northeast Dr., Jefferson City, Missouri 65102

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C.

[FR Doc. 82–2342 Filed 1–28–82; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations: Certificates of Origin

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Cuban Assets Control Regulations. The purpose of the amendment is to allow more flexibility in the content of certificates of origin which must accompany importations of items certified in accordance with the Regulations.

EFFECTIVE DATE: January 1, 1982.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376–0236.

SUPPLEMENTARY INFORMATION: Currently, a foreign certificate of origin accompanying regulated imports must refer to both the Cuban Assets Control Regulations and the International agreement under which the certificate is issued. This amendment changes § 515.536 to provide that a reference to either the Regulations or the international agreement is sufficient.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date, are inapplicable. Similarly, because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Section 515.536 is amended by the revision of paragraph (d)(2) as follows:

§ 515.536 [Amended]

* * * * *

(d) * * *

(2) It bears a statement by the issuing agency referring to the Cuban Assets Control Regulations or stating that the certificate has been issued under procedures agreed upon with the U.S. Government.

Dated: January 22, 1982.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

[FR Doc. 82-2340 Filed 1-28-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Special Regulations, Areas of the National Park System; Delaware Water Gap National Recreation Area, New Jersey-Pennsylvania; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The regulation set forth below is necessary to redesignate the snowmobiling route in Delaware Water Gap National Recreation Area (referred to hereafter as DWGNRA). Present NPS management policy permits snowmobile trails only on properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Snowmobiling at DWGNRA has been restricted by special regulations to one designated trail which follows old woods roads and farming access roads that are maintained by the park as emergency access roadways. These roadways are not open to the public during non-snow periods. In a few places the trail crosses open agricultural fields linking these emergency roads together. Since this route has been affected by the revised NPS snowmobile policy, an environmental assessment of alternatives of snowmobile management policies, regulations and routes at DWGNRA has been completed and is available for public review.

EFFECTIVE DATE: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Albert A. Hawkins, Superintendent, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324, Telephone: (717) 588-6637.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural, and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum of May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated 36 CFR 2.34 on April 1, 1974, which closed all National Park System areas to snowmobile use except those specifically designated as open by Federal Register notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR 2.34, the National Park Service developed a Servicewide policy revision which was published in the Federal Register on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. The snowmobiles must be consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives; and not disturb the wildlife or damage other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations.

This regulation is an exception to the NPS snowmobile policy because the DWGNRA snowmobile route consists of old woods roads and farming access roads which are maintained as emergency access roadways, but which are not open to the public during other seasons. In a few places, the trail crosses open agricultural fields linking these emergency roads together.

This route has been used since January 1971, and was designated by publication in the Federal Register on March 31, 1975 (40 FR 14313). The route met the requirements of Executive Order 11644 and the NPS general regulations in 36 CFR 2.34. Since the trail was designated in 1975, it has been rerouted slightly to eliminate some steep sections and to make a road crossing safer. This change is reflected in this regulation.

However, the route did not comply with the NPS snowmobile policy published in the Federal Register on August 13, 1979. Therefore, an environmental assessment of snowmobiling in DWGNRA was prepared; it recommended that snowmobiling be continued on the existing route. The assessment was approved by the Mid-Atlantic Regional Director on October 29, 1980.

This regulation was published as a proposed rule in the Federal Register on January 6, 1981 (46 FR 1313). During the 30-day period allowed for public comment, eleven comments were received. All supported the continuance of snowmobiling on the existing route. The regulation promulgated here is the same as was proposed. Because of the imminence of the snowmobile season and the fact that the public had an opportunity to comment on the proposed rule, the National Park Service is making this rule effective today.

Drafting Information

The following persons participated in the writing of this regulation: Karl J. Theune and James D. Arnott, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania; John Karish, Pennsylvania State University; and Arvell Washington, Mid-Atlantic Regional Office of National Park Service.

Compliance With Other Laws

The Service has prepared an environmental assessment on the proposal to allow the use of snowmobiles on the designated route at Delaware Water Gap National Recreation Area, and has made a determination of no significant impact pursuant to regulations implementing the National Environmental Policy Act (42 U.S.C. 4332). Copies are available for public review at the Office of the Superintendent, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324.

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193; February 19, 1981).

This rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act (94 Stat. 2812; 44 U.S.C. 3501 *et seq.*).

The Department of the Interior has determined that this rule does not have a significant economic effect on a substantial number of small entities and does not require a regulatory analysis under the Regulatory Flexibility Act (94 Stat. 1164, 5 U.S.C. 601 *et seq.*).

Authority

Section 3 of the Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3).

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

In consideration of the foregoing, Part 7 of Title 36 of the Code of Federal Regulations is amended by revising paragraph (b) of § 7.71 as follows:

§ 7.71 Delaware Water Gap National Recreation Area.

* * * * *

(b) *Designated snowmobile routes.* (1) A route in Middle Smithfield Township, Monroe County, Pennsylvania, bounded by the Delaware River on the east and Hidden Lake on the west. The route begins at the Smithfield Beach parking area and is in two loops. Loop One is a small trail approximately 3 miles long and follows the west bank of the Delaware River and closely parallels the east side of L. R. 45012 (commonly known as the River Road). Loop Two is approximately 6 miles long and begins at the northwest end of Loop One; it goes northeasterly between the Delaware River and River Road for about one mile until it crosses River Road; then southwesterly along the ridge which is south of Hidden Lake to a point opposite the west end of Hidden Lake, and then goes southeasterly until it returns to Loop One near River Road. Maps of the route are available at Smithfield Beach and at the office of the superintendent. Both loops are marked by appropriate signs.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-2090 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rate on New Guaranteed, Insured and Direct Loans for Homes and Condominiums

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rate on guaranteed, insured and direct loans for homes and condominiums. The maximum interest rate is increased because the former interest rate was not sufficiently competitive to induce private sector lenders to make VA guaranteed or insured loans without imposing substantial discounts. The increase in the interest rate will assure a continuing supply of funds for home mortgages; thereby allowing veterans to purchase a home with the assistance of a no downpayment VA loan.

EFFECTIVE DATE: January 25, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Ave., NW, Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by law to establish a maximum interest rate for loans guaranteed, insured or made by the Veterans Administration as he finds the mortgage money market demands. This authority has been delegated by 38 CFR 2.6(b)(3) to the Chief Benefits Director, Deputy Chief Benefits Director, or person authorized to act for them. Recent market indicators—including the rate of discount charged by lenders on VA and Federal Housing Administration loans, the general increase in interest rates charged by lenders on conventional loans, and the results of the bi-weekly Federal National Mortgage Association auctions—have shown that the mortgage money market has become more restrictive. The maximum rate in effect for VA guaranteed loans has not been sufficiently competitive to induce private sector lenders to make VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program it has been determined that an increase in the maximum permissible rates is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291 Certifications

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. Also, the existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process will still permit timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the maximum interest rate for VA guaranteed, insured, and direct home and condominium loans would create an acute shortage of mortgage funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

The official program numbers and titles of the VA programs affected by this action as set forth in OMB Circular A-89, Catalog of Federal Domestic Assistance, are 64.113, Veterans Housing—Direct Loans and Advances, and 64.114, Veterans Housing—Guaranteed and Insured Loans.

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1) and 1811(d)(1) of title 38, United States Code, and delegated to the undersigned by 38 CFR 2.6(b)(3). The regulations are clearly within that statutory authority and are consistent with Congressional intent.

The increases in the maximum interest rates are accomplished by amending §§ 36.4311(a) and 36.4503(a) of Title 38, Code of Federal Regulations, as described below.

Approved: January 22, 1982.

By direction of the Administrator.
Dorothy L. Starbuck,
Chief Benefits Director.

PART 36—LOAN GUARANTY

1. In § 36.4311, paragraph (a) is revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 16½ per centum per annum, effective January 25, 1982, the interest rate on any home or condominium loan guaranteed or insured wholly or in part on or after such date may not exceed 16½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

2. In § 36.4503, paragraph (a) is revised to read as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the Veterans Administration shall bear interest at the rate of 16½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 17 percent per annum (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

(38 U.S.C. 210(c), 1803(C), 1811(d)(1))

[FR Doc. 82-2360 Filed 1-28-82; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL 2011-3]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is today approving Colorado's Regulation No. 11 pertaining to Colorado's motor vehicle emission inspection program. The regulation covers certain aspects of the Colorado motor vehicle emission inspection program required to be submitted under the EPA 1982 State Implementation Plan (SIP) policy of January 22, 1981 (46 FR 7182). The EPA proposed to approve the regulation on July 23, 1981 (46 FR 37912), and solicited comments. No comments were received during the comment period. This rule does not constitute action on the overall Colorado inspection program because the remaining elements required by the 1982 SIP policy have not yet been received.

EFFECTIVE DATE: March 1, 1982.

ADDRESSES: Copies of the revision are available for public inspection between 8 am and 4 pm Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, D.C. 20460

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

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

SUPPLEMENTARY INFORMATION:

Background

Section 172(b)(11)(B) of the Clean Air Act requires the State Implementation Plan (SIP) for areas which cannot attain the National Ambient Air Quality Standards for ozone or carbon monoxide (CO) by 1982 to include provisions for a vehicle emissions inspection and maintenance (I/M) program. The 1979 SIP revision was required to contain only qualitative descriptions of the key elements of the I/M program; legal authority, schedule to begin, and commitments to implement and enforce the program, to provide adequate resources to support the program, and to achieve the required program effectiveness.

Colorado's SIP submittal of January 2, 1979, did not contain the required evidence of legal authority but a subsequent submittal allowed EPA to conditionally approve the I/M portion of the SIP (44 FR 57401). When the date provided in the conditional approval passed, EPA disapproved the CO and ozone portions of the Colorado SIP (45 FR 16486 and 45 FR 21634). The Colorado legislature passed a bill on May 7, 1980, which Governor Richard Lamm submitted as a SIP revision to EPA on May 29, 1980. The law established legal authority for an I/M program throughout the Colorado Front Range from Colorado Springs through Greeley and Ft. Collins, encompassing all Colorado CO or ozone nonattainment areas. EPA's evaluation and approval of that SIP revision is documented in 45 FR 47682 (July 16, 1980).

EPA published the 1982 SIP policy (part of which pertains to I/M programs) on January 22, 1981 (46 FR 7182). As discussed in that policy, states with areas that have I/M programs under development or operational as part of their 1979 SIP revisions were required to submit only qualitative descriptions of their I/M program elements in the 1979 SIP submittal. The 1982 SIP revision must include, unless already submitted and approved as part of a previous SIP submittal, rules and regulations and all other I/M elements which could affect the ability of the I/M program to achieve the minimum emission reduction requirements.

More specifically, the 1982 submittal must include: (1) inspection test procedures; (2) emission standards (3) inspection station licensing requirements; (4) emission analyzer specification and maintenance/calibration requirements; (5) recordkeeping and record submittal requirements; (6) quality control unit and surveillance procedures; (7) procedures to assure that non-complying vehicles are not operated on the public roads; (8) any other official program rules, regulations, and procedures; (9) a public awareness plan; and (10) a mechanics training program, if additional emission reduction credits are being claimed for mechanics training. Colorado submitted the first four of these ten elements.

EPA will determine the overall adequacy of the critical elements of each I/M program and, therefore, the approvability of the 1982 SIP by comparing those elements to established I/M policy. I/M program elements must be consistent with EPA policy or a demonstration must be made that the program elements are equivalent.

In the case of a partial submittal, EPA's action will be limited to the submitted program elements. Final action on the total I/M program must be reserved until all elements are submitted and reviewed in order to assure that the program satisfies the requirements in Part D of the Clean Air Act.

State Submittal

On December 29, 1980, Colorado submitted Regulation No. 11 which satisfies a portion of the I/M requirements for the 1982 SIP revisions. It includes procedures for garage licensing (including mechanic testing and licensing) equipment requirements (including standards and specifications for exhaust gas analyzers), requirements for inspections, and emission standards.

The emission standards are designed to provide a maximum stringency of 40 percent for 1968 through 1974 vehicles and 30 percent for 1975 and newer vehicles.

Cars will be tested using emission analyzers. Emission analyzers used in conducting the inspection must be approved by the Air Quality Control Commission. If cars comply with the standards they will be issued a certificate of emissions compliance. Model year 1966–1980 vehicles which fail to comply with the standards at the time of testing, will be adjusted to manufacturers' specifications and then retested. If they still fail to meet standards, they will be issued a certificate of emission adjustment and no further repairs or maintenance will be required unless emissions control devices have been altered, removed disabled or rendered inoperative.

Visual inspection of emission control devices will be performed. Owners of model year 1981 and later vehicles which have to comply with standards at the time of testing will be required to repair their vehicles to meet standards. If these vehicles still fail to meet standards after spending up to $100.00 on emissions related repair costs, they will be issued a certificate of emissions adjustment.

The high altitude performance adjustments provided by Section 215 of the Clean Air Act will be included as part of the adjustments required.

The full I/M program will begin on January 1, 1982, but a program requiring inspections after change of auto ownership and voluntary inspection began July 1, 1981. The provisions of the program requiring repairs on 1981 and later model years vehicles will begin on July 1, 1982.

EPA proposed to approve Regulation No. 11 of Colorado's I/M program on July 23, 1981 (46 FR 37912). For all four elements provided in the rule, the provisions of Regulation No. 11 meet or exceed the applicable requirements of EPA's I/M policy. However, because Colorado has not yet submitted all of the required elements for the 1982 SIP revision, EPA cannot take action at this time on Colorado's total I/M Program, or total 1982 SIP revision for I/M. As soon as Colorado submits the final six elements, and EPA determines that they meet I/M requirements, total approval will be granted.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. Section 605(b)), the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities—46 FR 8709 (January 27, 1981). This proposed rule, if promulgated, constitutes a SIP approval within the terms of the January 27, 1981 certification. This action only approves state actions. It imposes no new requirements.

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

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before March 30, 1982.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

Note.—Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1981.

Dated: January 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Section 52.320 is revised by adding a new paragraph(c)(25) as follows:

§ 52.320 Identification of plan.

(c) * * *

(25) On December 29, 1980, the Governor submitted the following rule:

Regulation No. 11, covering procedures for garage licensing (including mechanic testing and licensing), equipment requirements (including standards and specifications for exhaust gas analyzers), requirements for inspections, and emission standards as part of the Colorado motor vehicle inspection program.

[FR Doc. 82-2338 Filed 1-28-82; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60-250

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule: Suspension of Effectiveness of Contract Provision Requiring Quarterly Reports of Hiring Actions.

SUMMARY: The Department of Labor hereby suspends the effectiveness of 41 CFR 60–250.4(d) requiring government contractors to file quarterly reports of hiring actions, including veterans hired, under Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

This action is taken because the quarterly report requirement has not been approved by OMB under the Paperwork Reduction Act. It is further anticipated that this requirement will eventually be deleted from the regulations.

EFFECTIVE DATE: The suspension of this rule is effective January 29, 1982, and will remain in effect until the Department of Labor takes final action on the proposal to amend 41 CFR Part 60–250, published December 30, 1980. (See 45 FR 86206.)

FOR FURTHER INFORMATION CONTACT: James Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523–9426.

SUPPLEMENTARY INFORMATION: Department of Labor regulations implementing section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, require each covered government contract and subcontract to contain the affirmative action clause set forth at 41 CFR 60–250.4. This affirmative action contract clause requires government contractors subject to the mandatory job listing requirement of the Act to file quarterly reports with appropriate local offices of state employment services detailing specific data regarding hiring activity, including veterans hired, in each of the contractor's hiring locations. However, because the quarterly report would collect identical information from 10 or more persons, it was subject to review under the Federal Reports Act, as

amended by the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 USC 3501, et. seq.) The quarterly report has not been approved under the Paperwork Reduction Act. In the absence of such approval, Federal contractors and subcontractors are not required to submit or retain copies of these quarterly reports. Accordingly, Paragraph (d) of 41 CFR 60–250.4 is hereby suspended until final action is taken on the proposal to amend 41 CFR Part 60–250, published December 30, 1980 (45 FR 86206), in which it was proposed to delete this requirement.

This suspension is being published in final form because the Department finds that notice and public comment on this suspension are unnecessary and contrary to the public interest.

(Sec. 503(a), Pub. L. 92–540, 86 Stat. 1097 (38 U.S.C. 2012), as amended by sec. 402, Pub. L. 93–508, 88 Stat. 1593 (38 U.S.C. 2010); and Pub. L. 96–466, 94 Stat. 2171)

Dated: Signed this 22nd day of January 1982 at Washington, D.C.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary of Labor for Employment Standards.

Ellen M. Shong,

Director, Office of Federal Contract Compliance Programs.

[FR Doc. 82–2409 Filed 1–28–82; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6245]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended effective the dates listed within this rule because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATE: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287–0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elasped since identification of the community as having flood prone areas, as shown on the Federal Emergency Management Agency's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director of State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small intities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood looses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in non-compliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Arizona: Navajo	Taylor, town of	040071B	Aug. 5, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	May 17, 1974, and Apr. 30, 1976.	Feb. 3, 1982.
Connecticut:					
Tolland	Andover, town of	090161A	Nov. 20, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Apr. 18, 1975	Do.
Litchfield	New Hartford, town of	090048B	June 2, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Sept. 13, 1974, and Feb. 11, 1977.	Do.
Windham	Windham, town of	090119C	June 26, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Apr. 12, 1974, and Dec. 24, 1976.	Do.
Florida: Osceola	Unincorporated areas	120189B	Sept. 4, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Jan. 3, 1975, and Aug. 12, 1977.	Do.
Iowa: Linn	Hiawatha, city of	190441A	Apr. 23, 1976, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Apr. 23, 1976	Do.
Massachusetts:					
Bristol	Easton, town of	250053B	Aug. 15, 1974, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Sept. 20, 1974, and Nov. 19, 1976.	Do.
Middlesex	Framingham, town of	250193B	Jan. 21, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Aug. 2, 1974, and Dec. 13, 1977.	Do.
Nebraska: Lancaster	Unincorporated areas	310134B	Feb. 16, 1979, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Feb. 28, 1978	Do.
New Jersey:					
Gloucester	Franklin, township of	340202B	July 6, 1976, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Sept. 13, 1974, and Aug. 13, 1976.	Do.
Hunterdon	Lebanon, borough of	345299B	July 1, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Aug. 18, 1972	Do.
Passaic	Ringwood, borough of	340407B	June 18, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	June 28, 1974, and July 16, 1976.	Do.
New York:					
Tioga	Newark Valley, town of	360835B	June 25, 1973, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Feb. 22, 1974, and Oct. 10, 1975.	Do.
Do	Newark Valley, village of	360836B	Sept. 2, 1976, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	June 7, 1974, and Apr. 30, 1976.	Do.
Niagara	Somerset, town of	360512B	May 24, 1973, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Mar. 15, 1974, and June 18, 1976.	Do.
North Dakota: Cass	Pleasant, township of	380263A	Mar. 21, 1978, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.		Do.
Oregon: Linn	Harrisburg, city of	410140B	Dec. 31, 1974, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Mar. 1, 1974, and June 25, 1976.	Do.
Pennsylvania:					
Fayette	Fayette City, borough of	420464B	July 30, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Feb. 22, 1974, and Apr. 16, 1976.	Do.
Delaware	Lansdowne, borough of	420418B	June 23, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	May 31, 1974	Do.
Montgomery	Lower Salford, township of	421170A	Apr. 30, 1974, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Nov. 1, 1974	Do.
Do	Perkiomen, township of	421915B	Oct. 29, 1974, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Oct. 25, 1974, and May 28, 1976.	Do.
Fayette	Perryopolis, borough of	421616B	Feb. 18, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Feb. 18, 1975, and July 22, 1977.	Do.
Allegheny	Robinson, township of	421097B	Mar. 17, 1976, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Sept. 20, 1974, and Aug. 20, 1976.	Do.
Montgomery	Salford, township of	422497A	Aug. 29, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Dec. 6, 1974	Do.
South Dakota: Lawrence	Deadwood, city of	460045A	Nov. 26, 1974, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	July 11, 1975	Do.
Utah: Weber	Riverdale, city of	490190C	Oct. 4, 1974, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Mar. 13, 1979, June 28, 1974, and Nov. 28, 1975.	Do.
Virginia:					
Indep. City	Falls Church, city of	510054B	Apr. 24 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	May 7, 1976	Do.
Fairfax	Vienna, town of	510053B	Aug. 8, 1974, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	Aug. 2, 1974, and Oct. 24, 1975.	Do.
Washington: Pierce	Fircrest, town of	530141B	June 4, 1975, emergency; Feb. 3, 1982, regular; Feb. 3, 1982, suspended.	June 28, 1974	Do.
West Virginia: Jackson	Ripley, city of	540064B	Feb. 11, 1974, emergency; Sept. 1, 1977, regular; Feb. 3, 1982, suspended.	Sept. 1, 1977 B	Do.

[1]Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: January 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-2252 Filed 1-28-82; 8:45 am]

BILLING CODE 6718-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order Nos. 1473 and 1495]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Co., Debtor (William M. Gibbons, Trustee) and Burlington Northern Railroad Co. and Fort Worth and Denver Railway Co. Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Decision.

SUMMARY: The Commission requested information on whether temporary service over lines of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island), under Section 122 of the Rock Island Railroad Transition and Employee Assistance Act (RITEA), should be terminated or permitted to continue, and on the compensation formula to be applied, if service continues, where Rock Island and operating carriers have not agreed on a compensation amount. This decision describes the results of our review of the information filed pursuant to that request.

DATE: This decision shall be effective on January 27, 1982.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 275–7840 or 275–1559.

SUPPLEMENTARY INFORMATION: By notice served September 21, 1981, (46 FR 47101, September 24, 1981), the Commission indicated its intent to consider whether, and for how long service over the Rock Island should be permitted to continue under the authority of Section 122 of the Rock Island Railroad Transition and Employee Assistance Act (RITEA) Pub. L. 96–254. Particularly to be considered were situations where there has been no clear effort to lease or purchase the Rock Island lines. The notice requested the Rock Island Trustee, the various carriers providing service under Service Order Nos. 1473 and 1495, and any interested person (particularly shippers and communities on the lines) to file comments or provide information and argument relating to the necessity and appropriateness of such service authority. It was directed that part of this showing include a detailed history, discussion, and status report on negotiations for the purchase or lease of Rock Island lines.

We consider the development of such information important, especially in light of a recent letter by the Rock Island Trustee to the Commission requesting that authorities for those carriers compensating the estate on the basis of the Frisco Formula *(St. Louis-S.F. Ry. Co.-Compensation-Chicago, R.I. & P.,* 363 I.C.C. 264) not be extended beyond September 30, 1981, and that future service authority be granted only to those carriers negotiating in good faith with the Trustee under interim lease agreements approved by the Court. The Trustee was directed to provide sufficient information on leases entered into with affected carriers and any other contracts to permit the Commission to consider whether we should continue to prescribe the *Frisco Formula* as the appropriate measure of compensation, in those cases in which the Trustee and the interim operator are unable to agree on compensation, if operating authority is continued.

The responses received to the notice were from a wide variety of interests; however, the statements received varied less widely. Shippers, affected communities, and states stressed almost without exception the urgent need for continued rail service during the bankruptcy process. The industries ranged from shippers of bulk agricultural commodities located in the grain-producing states to manufacturers located in the heavily industrialized areas surrounding Chicago. The impacts ranged from the loss of competitive advantage by the elimination of rail as a viable alternative mode to virtual shutdown due to the unacceptability of truck transportation as a viable alternative mode. One industry facing a shutdown is Pullman Standard, Inc., located near Chicago, which manufacturers high speed rail equipment for mass transit authorities. The shutdown of such an industry would mean the elimination of 1,500 jobs and the accompanying $45 million annual payroll.

Similarly, Congressional representatives urged continuation of essential services over Rock Island lines and reemphasized their interpretation of Section 122, describing the Commission's authority as plenary and the Congress' intention to be that such authority should continue during the bankruptcy process. Subsequent to the filings in this proceeding, the Congress amended Section 122, in the Record Carrier Competition Act, Pub. L. 97–130 (December 29, 1981), as follows:

Section 5. Amendment to other Law:

(a) Section 122(a) of the Rock Island Transition and Employee Assistance Act is amended by adding at the end thereof the following new sentence: "The Commission shall have authority to authorize continued rail service under this section over lines of the Rock Island Railroad until the disposition of the properties of the estate of the Rock Island Railroad."

(b) The applicability of the amendment made by subsection (a) to Interstate Commerce Commission Service Order 1498 shall expire at the end of May 15, 1982.

Moreover, the Senate Committee on Commerce, Science, and Transportation has reported favorably S. 1879, the Milwaukee Railroad and Rock Island Railroad Amendments Act, which would establish a procedure whereby a financially responsible person may resort to the Commission if its bona fide offer to purchase a rail line for continued rail use has been rejected by the Trustee. A similar bill, H.R. 5137, has been introduced in the House of Representatives.

Railroad responses reflected a general consensus that Section 122 authority is necessary, even though many have negotiated leases with the Trustee, and should be continued to permit purchase negotiations to continue. In most cases the railroads performing interim service indicated an interest in purchasing the properties being operated, and in several cases specific offers have been made to the Trustee. The Norfolk and Western (NW) and the Oklahoma, Kansas and Texas (OKKT) have each

offered to purchase the line segments being operated and in each case the offers have been declined by the Trustee. The Cadillac and Lake City (CLK) and Southern Railway (SOU) have also made offers to the Trustee which have been declined for the purchase of terminal trackage in Colorado and at Memphis, Tennessee, respectively. The Milwaukee Road (MILW), Chicago and North Western (CNW), and the Missouri Pacific (MP) have indicated that negotiations are in progress, and the Chessie System has entered a fifty year lease with the Trustee to operate certain properties in Illinois. Burlington Northern (BN) has indicated an interest in certain line segments, not necessarily those currently being operated.

Presently there are numerous operations on the Rock Island under authority of Section 122, which represent varying levels of agreement and compensation. In our notice requesting information, we directed the Trustee to provide sufficient information on leases entered into with the affected carriers and any other contracts to make any necessary determinations where the Trustee and other carriers cannot agree. The Trustee's response to a limited extent described the criteria used for negotiating lease rates but failed to discuss in depth various compensation agreements now in effect between the Rock Island and various carriers and entities, the specific characteristics of each agreement, or how they were negotiated. There are 23 agreements with monthly payments ranging from $275 to $3,276 per mile. The Trustee does not explain the substantial differences in these rentals, nor does he provide sufficient information on the specific leases for us to be able to determine any systematic method used to calculate the rental payment. The Trustee states only that each agreement must be negotiated individually to reflect the special features attributed to the line segment involved, and that it is not possible for a single "per mile formula" or "flat rate" to be applied to all line segments. In addition to such items as width of right-of-way, land values, number of main tracks, benefits to the operator, and taxes, the Trustee indicates that consideration is given to the earning power of the line as a factor in computing compensation.

In essence, we believe the method used by the Trustee for computing rental and the *Frisco Formula* specified by the Commission are not substantially different. While the limited information presented by the Trustee has not made our job of determining compensation easier either here or in determining the *Frisco Formula*, his current disclosures have given some additional insight as to his methodology. The consideration of a line's earning power and property to be used seems to support clearly the Commission's determination that a two-part formula assures adequate compensation. It is possible that the earning power of a particular line where service has been sporadic would be less if based upon earning power in advance of operation as opposed to earnings generated through actual operation as provided by the percentage of net revenues. Moreover, the objective of this process is to provide the estate with adequate compensation during the interim operations pending actual liquidation of the properties. The Trustee, on the other hand, seems to have taken more of a final disposition approach to interim operations in seeking compensation as if it were intended to span a considerable length of time and to provide a substantial return on investment instead of to defray fixed costs and prevent diminution of the estate during liquidation. The Trustee's "triple net terms to the lessee of taxes, insurance, and maintenance" seem to be an indication of this approach. In addition to compensating the estate for the use of the property, lessees' under triple net terms would be responsible for paying property taxes, acquiring insurance, and maintaining the property operated.

Further, we do not find any substantial evidence to support the Trustee's contention that continued interim operations over Rock Island lines under Section 122 are impeding his efforts to liquidate the estate even though no plan has been filed or public statement made with respect to such liquidation. Furthermore, sales of major portions of the Trustee's rail properties do not appear to be negatively impacted by the operations authorized by the service orders and their extensions, when in fact these operations are preventing further deterioration of the estate and the commerce along the lines.

Short of dismantling, which in itself would eliminate continued rail use as one major form of liquidation, the Trustee has full facility to entertain or extend offers, carry on negotiations, and agree preliminarily to the sale of any line segment for continued rail or other use. Should interim operations be ongoing simultaneously, the only effects would be the maintenance of a stable traffic base which could be transferred to the new owner/operator, and compensation to the Trustee for otherwise idle property. Should the prospective purchaser intend other than continued rail use, then coordination by the Trustee in the form of thirty days' notice to the Commission would be sufficient to permit the wind down of rail operations and the placement of necessary embargoes. With that in mind, we do not believe that the present continuation of temporary authorities under Section 122 either impedes the trustee's efforts to liquidate or diminishes the estate, particularly when the majority of the operations are the subject of lease agreements with the trustee and contribute substantial compensation to the estate. It is our opinion that Section 122 authorities may be continued at least until a specific liquidation plan has been approved by the Commission or by the Bankruptcy Court, as appropriate.

Conclusion

In prescribing the basis upon which compensation to be paid to the Trustee of the Rock Island should be calculated, we continue to prefer a two-part formula. As stated in the *Frisco Formula* decision we believe the two-part compensation formula makes a reasonable accommodation of the opposing interests of the parties. The first part is established to provide a constant base compensation from which expenses accruing to the estate can be paid. The second part contemplates additional compensation to the Trustee based on revenues generated on the specific line segment.

Generally, the segments of Rock Island lines to which this formula would be applied are unconnected short segments with questionable viability. The longer, more viable segments are typically covered by leases or negotiated agreements and, as such, likely would not be the subject of an interim compensation formula.

In determining the first part of the formula, which sets the monthly mileage rate, we have analyzed the available information. In so doing, we have considered as criteria for the formula, the short-term nature of such arrangements to offset expenses to the estate during liquidation; the usually short, unconnected segments involved in the operations; and the untested contributions to the formula of percentage of net revenues derived from the operation.

The first part of the formula is set at $275 per mile per month, and is equal to the lease agreement with the Iowa Northern Railroad for a 43 mile segment in Iowa which includes Cedar Rapids. We feel this operation is representative of those which may be the subject of the

interim compensation formula. The second part of the formula, which contemplates additional compensation to the Trustee through net revenues, will be set at the 14.4 percent *Frisco* level which was suggested by the Trustee as a reasonable rate of return.

We realize that the monthly mileage rental amount is less than other amounts negotiated by the Trustee; however, it presupposes net revenues in the absence of a showing to the contrary. In result, the formula should provide either a substantially improved return to the estate, or a means to terminate marginal operations with little or no prospective return.

In implementing this decision we will require that interim operators, utilizing this formula, report to the Commission and the Trustee simultaneously by the 15th day of each month on the traffic generated for the previous month. This report should include the number of cars loaded, the gross revenues generated on the line, and the expenses attributed solely to that operation. Any expenses attributed to overhead traffic, which that carrier may move over the Rock Island line, may not be used to reduce revenues and should be shown separately. This information will be used to evaluate the effectiveness of the formula in actual application. In the meantime, any party to the few situations in which resort to this formula is required because of inability of the parties to agree upon compensation may apply to us for reconsideration of the compensation provided, setting forth the details of the specific circumstances of their operation that warrant reconsideration.

We recognize that the Court overseeing the reorganization of the Rock Island has recently declared Service Order No. 1498 to be void and enjoined OKT from operating over lines of the Rock Island under the authority of that service order. We believe that decision, which is the subject of appeals by numerous parties including ourselves and the United States, should be deemed to be limited to the particular facts of the situation in which it arose. In all other circumstances, however, we believe the public interest in adequate and continuous transportation requires that we continue to exercise the authority granted to us by Section 122 of the RITEA and that our doing so is also in the best interests of the estate.

We find:

1. That continuation of interim authorities under Section 122 of the Rock Island Railroad Transition and Employee Assistance Act (P.L. 96–254) will not impede efforts of the Trustee or diminish the estate.

2. There is reason to reconsider the basis for computing compensation to be paid the Trustee in cases where the parties cannot agree.

3. That terms of compensation set forth in this decision are reasonable, based on the available information, and will accommodate the interest of the Rock Island and the public.

4. That reporting by interim operators utilizing the new formula is necessary to validate the formula's effectiveness, to verify the correctness of payments to the Trustee, and to permit us to modify the formula if warranted by a specific situation.

5. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is Ordered:

1. That interim authorities under Section 122 of the Rock Island Railroad Transition and Employee Assistance Act (Pub. L. 96–254) will be continued without interruption at least until the Trustee provides the Commission and the public with a definitive statement describing his plans for carrying out the Court ordered liquidation.

2. That the *Frisco Formula* is replaced by the *Rock Island Formula* of $275 per mile per month plus 14.4 percent of net revenues, and our prior orders which have prescribed the *Frisco Formula* are hereby modified to adopt this formula effective February 1, 1982.

3. That interim operators without agreements with the Trustee shall utilize this formula, unless upon a showing by any party of special circumstances some other formula is prescribed, and must report to the Commission and the Trustee simultaneously by the 15th day of each month on the traffic generated during the previous month. This reporting should include the number of cars loaded, the gross revenues generated on the line, and the expenses attributed solely to the interim operations. Any expenses incurred in handling overhead traffic which was not generated at points covered by this authority, and which the interim operator may move over the Rock Island line, must not be used to reduce revenues and should be shown separately.

4. This decision is effective on January 27, 1982.

A copy of this order shall be served upon the Association of American Railroads and each of the named respondents. Notice shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and publishing a copy in the **Federal Register.**

Dated: January 18, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham and Clapp.

Agatha L. Mergenovich,

Secretary.

Respondents—Service Order No. 1473 and No. 1495, Notice of September 21, 1981

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Ken Kramer, U.S. House of Representatives, Washington, D.C. 20515
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Fred W. Fielder—Petition (no address), President, The Northern Kansas Rail Association Company
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[FR Doc. 82-2331 Filed 1-82; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR Parts 1201, 1206, 1207 and 1249

[No. 38709]

Disclosure of Long-Term Obligations; Adoption of Accounting Principles

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is formally adopting generally accepted accounting principles related to the disclosure of certain long-term obligations. This includes commitments under unconditional purchase obligations that are associated with suppliers' financing arrangements and future payments on long-term borrowings and redeemable stock. The disclosure requirements are detailed in Financial Accounting Standards Board Statement No. 47, Disclosure of Long-Term Obligations (FASB Statement No. 47, March 1981). This rule eliminates carrier discretion in disclosing or not disclosing these obligations.

DATES: Effective for the reporting year beginning on or after January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Wayne D. Howard, Jr., (202) 275-7448.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 49 CFR 1200.2 on adoption of generally accepted accounting principles, the Bureau of Accounts issued Accounting Series Circular No. 191 on Disclosure of Long-Term Obligations (ASC 191, June 26, 1981). ASC 191 advises all carriers subject to the Commission's accounting regulations to disclose and quantify their commitments under unconditional purchase obligations associated with financing arrangements. Further, the circular requires disclosure of future payments on long-term borrowings and redeemable stock. These requirements incorporate FASB No. 47.

Review of Responses

Carriers and other interested parties had until August 10, 1981, to respond to ASC 191. The Bureau of Accounts received comments from one respondent: the Association of American Railroads (AAR), representing its member railroads. It agrees with the Commission's continued efforts to conform its accounting and reporting rules with generally accepted accounting principles.

However, the AAR states that if the Commission adopts FASB No. 47, the rule should refer to the statement refraining from further discussion and interpretation. The AAR maintains that FASB No. 47 already adequately presents the subject; paraphrasing its contents may alter or confuse the statement.

Discussion and Conclusions

The Financial Accounting Standards Board has issued FASB No. 47 as an interim measure pending further work on certain studies on conceptual framework for financial accounting and reporting. The statement ensures that at a minimum a business entity shall disclose project financing arrangements and other unconditional purchase obligations as well as future payments on long-term borrowings and redeemable stock. Previously, some business entities recognized these types of transactions as liabilities on the balance sheet; others ignored the transactions entirely. The statement does not substitute disclosure for appropriate accounting recognition, however.

ASC 191 summarizes FASB No. 47. We agree with the AAR's concern that confusion develops by paraphrasing a specific issuance of the Financial Accounting Standards Board. Accordingly, the adoption of FASB No. 47 is simplified by inserting in the uniform systems of accounts a reference to disclosing long-term obligation in accordance with generally accepted accounting principles. Carriers requiring additional clarification may submit accounting details to the Bureau of Accounts for interpretation.

For reporting purposes, minor revisions to the annual reports for Class I and Class II motor carriers of property (M) and Class I and Class II motor carriers of household goods (M-H) accommodate the new disclosure requirements. For Class I and Class II railroads, Annual Reports R-1 and R-2 provide for the disclosure of long-term obligations in Schedule 200, Comparative Statement of Financial Postition—Explanatory Notes. The instructions require the disclosure of items "commonly disclosed under generally accepted accounting and

reporting principles." For Class I motor carriers of passengers, Annual Report MP-1, Schedule 201, Comparative Balance Sheet Statement—Explanatory Notes, requires similar disclosure in Note 4.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Commission has certified that the requirements of the Regulatory Flexibility Act do not apply to this final rule since it will not have a significant impact on a substantial number of small businesses. This rule requires regulated carriers to disclose in the appropriate annual reports certain details related to long-term obligations in accordance with generally accepted accounting principles. This disclosure is an accepted accounting practice required by the Financial Accounting Standards Board; for Commission reporting, the carriers should not incur significant expense or unduly utilize other resources to comply with this disclosure requirement.

This action does not significantly affect the quality of the human environment or the conservation of energy resources.

This action is taken under authority of 5 U.S.C. 553 and 49 U.S.C. 10321.

We adopt, in Appendix A of this document, the accounting changes to 49 CFR Parts 1201, 1206 and 1207 and in Appendix B the reporting changes to annual to reports described in 49 CFR Parts 1249.1 and 1249.2.[1]

Decided: January 19, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, and Clapp.

Agatha L. Mergenovich,

Secretary.

Appendix A

PART 1201—RAILROAD COMPANIES

1. Amend 49 CFR Part 1201, Subpart A as follows:

a. Under List of Instructions and Accounts, add Instruction 5–7, *Long-term obligations.*

b. Add Instruction 5–7, Long-term obligations:

5–7 Long-term obligations.

Commitments under unconditional purchase obligations associated with suppliers' financing arrangements and future payments on long-term borrowings and redeemable stock shall be disclosed in accordance with generally accepted accounting principles. Such disclosures shall not preclude accounting recognition if the substance of a financing arrangement is the acquisition of an asset or incurrence of a liability.

PART 1206—COMMON AND CONTRACT MOTOR CARRIERS OF PASSENGERS

2. Amend 49 CFR Part 1206 as detailed below:

a. In list of instructions, revise Instruction 2–18 heading, *Contingent assets and liabilities,* to read, *Disclosure of contingent assets and liabilities and long-term obligations.*

b. In Instruction 2–18, *Contingent assets and liabilities,* revise the title and text to read:

2–18 Disclosure of contingent assets and liabilities and long-term obligations.

(a) Contingency gains and losses shall be disclosed by footnotes to the balance sheet. This includes any arrears in cumulative dividends showing the amount per share of each class of stock and the facts and amounts related to any default in principal, interest or sinking fund provisions if not shown in the balance sheet accounts.

(b) Commitments under unconditional purchase obligations associated with suppliers' financing arrangements and future payments on long-term borrowings and redeemable stock shall be disclosed in accordance with generally accepted accounting principles. Such disclosures shall not preclude accounting recognition if the substance of a financing arrangement is the acquisition of an asset or incurrence of a liability.

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

3. Amend 49 CFR Part 1207 as shown below:

a. In list of instructions, amend Instruction 15 heading, *Contingent assets and liabilities,* to read, *15. Disclosure of contingent assets and liabilities and long-term obligations.*

b. In Instruction *15, Contingent assets and liabilities,* revise the title, designate the existing test as paragraph (a), and add paragraph (b) to read:

15. Disclosure of contingent assets and liabilities and long-term obligations.

(a) The balance sheet of . . .

* * * * *

(b) Commitments under unconditional purchase obligations associated with suppliers' financing arrangements and future payments on long-term borrowings and redeemable stock shall be disclosed in accordance with generally accepted accounting principles. Such disclosures shall not preclude accounting recognition if the substance of a financing arrangement is the acquisition of an asset or incurrence of a liability.

Appendix B

PART 1249—REPORTS OF MOTOR CARRIERS

Note.—Appendix B describing a change to Annual Reports M (Class I and Class II motor carriers of property) and M–H (Class I and II motor carriers of household goods) referred to in 49 CFR 1249.1 and 1249.2 is filed as part of the original document.

[FR Doc. 82–1925 Filed 1–28–82; 8:45 am]

BILLING CODE 7035–01–M

[1] Appendix B is filed as part of the original document.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

Foreign Fishing, and Groundfish in the Bering Sea and Gulf of Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This notice retroactively reapportions groundfish in the Bering Sea and Gulf of Alaska among domestic and foreign fishermen and processors. The reapportionment was a revision of the August 2 reapportionments required by regulation, and allowed the foreign and domestic fisheries to proceed without interruption to achieve optimum yield.

DATES: December 14, 1981, through December 31, 1981.

ADDRESS: The data upon which this rule is based are available for public inspection at the office of the Alaska Region, National Marine Fisheries Service, Room 453, Federal Building, 709 West 9th Street, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone (907) 586–7221.

SUPPLEMENTARY INFORMATION:

Background

Optimum yields for various groundfish in 1981 were established by the preliminary fishery management plan (PMP) for the Trawl Fisheries and Herring Gillnet Fishery of the Bering Sea and Northeast Pacific Ocean (42 FR 9298, amended and by the fishery

management plan (FMP) for Groundfish of the Gulf of Alaska (43 FR 17013), as amended). The optimum yields (OY) are apportioned initially to domestic annual harvest (DAH), reserve, and total allowable level of foreign fishing (TALFF). Thus, OY=DAH+reserve+TALFF. In turn, DAH is apportioned between domestic annual processing (DAP), joint venture processing (JVP), and domestic non-processed fish (DNP); thus, DAH=DAP+JVP+DNP. Under 50 CFR 611.93(b)(3) as it read during 1981, and under 611.92(c)(1), the Secretary of Commerce (Secretary) may reapportion DAH to TALFF, apportion the reserve to DAH or TALFF, and adjust the DAP, DNP, and JVP specifications within DAH.

In the scheduled August 2 reapportionment, reserves were apportioned to TALFF and DAH and reapportioned supplements of DAH were apportioned to TALFF (46 FR 44985). Adequate amounts were maintained in DAH to allow for uncertainties in the predicted catch by U.S. fishermen, including those engaged in joint ventures with foreign processing vessels. The Secretary reviewed the actual performance and lowered the estimate of U.S.-caught fish that would be delivered to foreign vessels and to domestic processors between August 2 and December 31. Due to the lengthy approval process required by Executive Order 12291, it was impossible to publish this rule before the end of the year.

For the record, only, this notice apportions to the 1981 TALFF additional amounts of DAH that were considered surplus to U.S. fishermen's needs. The Secretary took this action under 50 CFR 611.93(b)(3) and 611.92(c)(1) and 672.20(c).

Part 1. Bering Sea and Aleutian Islands

In November, U.S. fishermen were in the process of completing the one remaining joint venture with foreign processing vessels, and no further joint venture activity was anticipated in 1981. Therefore, the following amounts were deducted from the JVP portion of DAH and reapportioned to TALFF: Pollock—10,000 mt, yellowfin sole—8,000 mt, and Pacific cod—10,000 mt. Domestic harvest for domestic processing also was less than was anticipated. Therefore, the following amounts were deducted from the DAP portion of DAH and reapportioned to TALFF: Pollock—2,000 mt and yellowfin sole—1,000 mt.

Part 2. Gulf of Alaska

In November, no joint venture activity was expected in the Gulf of Alaska for the rest of 1981. Therefore, the following amounts of surplus pollock and Pacific cod in the JVP portion of DAH for the Central Gulf of Alaska were reapportioned to TALFF: pollock—5,000 mt and Pacific cod—1,000 mt.

The expected increase in the U.S. harvest of Pacific cod in the Central Gulf of Alaska was not as great as anticipated. The U.S. harvest of pollock in the Central Gulf of Alaska was also less than expected. Therefore, the following portions of the DAP for Pacific cod and pollock were reapportioned to TALFF: Pacific cod—3,000 mt and pollock—3,000 mt.

Administrative Procedure Act

In view of the previous opportunity for public comment on the August 2 apportionment and the need to avoid disrupting U.S. and foreign fisheries, the Secretary has determined that further notice and opportunity for public comment on this rule would be impracticable, unnecessary, and contrary to the public interest and that it should be effective January 29, 1982.

National Environmental Policy Act

Environmental impact statements were prepared on the PMP and FMP and are on file with the Environmental Protection Agency (EPA). Environmental assessments and negative determinations of significant environmental impact were prepared on the current regulations implementing the PMP and FMP, and are also on file with the EPA. As an integral feature of the management system established by the FMP, the PMP, and their implementing rules, this rule is not a separate major Federal action significantly affecting the quality of the human environment.

Classification

The Administrator, NOAA, has determined that this action is not a major rule under E.O. 12291 and, as such, does not require a regulatory impact analysis. A regulatory flexibility analysis is not required under the Regulatory Flexibility Act because the rule does not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The rule, which is being published in final form, implements a provision in the regulations which allows the Secretary to make inseason reassessments of DAH and the need for reserves, and to reapportion to TALFF those amounts which he determines will not be harvested by vessels of the United States.

This rule does not contain a collection of information requirement, and does not involve any agency in conducting or sponsoring the collection of information (44 U.S.C. 3501 *et seq.*).

Promulgation of this rule does not constitute a Federal activity "directly affecting" the Alaska coastal zone within the meaning of section 307(c)(1) of the Coastal Zone Management Act of 1972.

The final figures for 1981 are shown in the following table.

For the reasons set forth in the preamble, 50 CFR Parts 611 and 672 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1821 and 1855.

2. In 611.20, Appendix I, entries 4.A and 4.E are amended to read as follows:

§ 611.20 Total allowable level of foreign fishing.

* * * * *

APPENDIX I—OPTIMUM YIELD (OY), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), DOMESTIC NON-PROCESSED FISH (DNP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY=DAH+RESERVE+TALFF. DAH=DAP+DNP+JVP.

Species	Species code	Area	OY	DAH	DAP	JVP	DNP	Reserve	TALFF
*	*	*	*	*	*	*			
4. Alaska fisheries									
A. Bering Sea and Aleutian Islands fishery:									
Pollock	701	Bering Sea	1,000,000	44,550	500	44,050		0	955,450
Yellowfin sole	720		117,000	17,200	200	17,000		0	99,800
Pacific cod	702		78,700	27,232	15,200	12,032		0	51,468

APPENDIX I—OPTIMUM YIELD (OY), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), DOMESTIC NON-PROCESSED FISH (DNP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY=DAH+RESERVE+TALFF. DAH=DAP+DNP+JVP.—Continued

Species	Species code	Area	OY	DAH	DAP	JVP	DNP	Reserve	TALFF
E. Gulf of Alaska fishery:									
Pollock	701	Central	111,066	21,326	3,277	18,049		0	89,740
Total			196,933	26,293	4,117	22,176		0	170,640
Pacific cod	702	Central	39,130	3,058	1,060	598	1,400	0	36,072
Total			70,000	6,366	1,667	1,199	3,500	0	63,634

PART 672—GROUNDFISH OF THE GULF OF ALASKA

3. The authority citation for Part 672 reads as follows:

Authority: 16 U.S.C. 1855.

4. In § 672.20, Table I is amended as follows:

§ 672.20 Optimum yield.

* * * * * *

TABLE 1. OY, DAH, DAP, DNP, JVP, RESERVE, AND TALFF BY REGULATORY AREA

Species	Species code	Areas	OY	DAH	DAP	JVP	DNP	Reserve	TALFF
Pollock	701	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
		Central	111,066	21,326	3,277	18,049		0	89,740
		* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
Total			196,933	26,293	4,111	22,176		0	170,640
Pacific Cod	702	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
		Central	39,130	3,058	1,060	598	1,400	0	36,072
		* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
Total			70,000	6,366	1,667	1,199	3,500	0	63,634

* * * * * *

(16 U.S.C. 1801 *et seq.*)

Dated: January 21, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-2291 Filed 1-28-82; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, has given final approval to parts of Amendment 3 to the Fishery Management Plan for Surf Clam and Ocean Quahog Fisheries (FMP). The amendment extends the FMP indefinitely. The amendment contains management measures intended to allow the fisheries to attain optimum yield, to increase the operational flexibility of fishermen and processors, and to reduce the burden of management on the affected public. NOAA issues these final regulations to implement the amendment.

EFFECTIVE DATE: January 26, 1982.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Plan Coordinator; 617-281-3600.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. On October 24, 1981, the Secretary of Commerce implemented certain portions of Amendment 3 by promulgating emergency regulations (46 FR 53181). Comprehensive proposed regulations for Amendment 3 were published on November 25, 1981 (46 57707).

In preparing this amendment, the Council addressed a number of areas of concern while retaining the basic management framework established by the FMP. The Council made the management program consistent with current trends toward greater flexibility in resource management.

Optimum Yield for the Fisheries

The original FMP established annual levels of optimum yield (OY) for each fishery, U.S. capacity to harvest and process, and total allowable levels of foreign fishing (TALFF). The values were fixed and could not be changed without a plan amendment. This amendment establishes a flexible procedure which will allow the Regional Director, in consultation with the Council, to specify quotas on an annual basis from within a range which has been identified as OY. The Regional Director will consider stock assessments, catch records, and other relevant information concerning exploitable biomass and spawining biomass, fishing mortality rates, incoming recruitment, projected effort and catches, and areas likely to be reopened to fishing in his selection of a quota from the OY range. The quota will be adopted after the public has an opportunity to review and comment on the value selected. Notice of proposed 1982 quotas was published in the **Federal Register** on January 27, 1982.

Establishing a 5½ Inch Minimum Surf Clam Size

Emergency regulations establishing a 5½ inch minimum size for surf clams were effective July 26, 1981 (46 FR 37051). The size limit was imposed at the request of the Council and industry to achieve several purposes. The size limit allows for increased spawning opportunity for surf clams, which may increase recruitment into the fishery in the future. The size limit also prevents the harvest of large quantities of small surf clams which are inferior in yield and in the type of product that can be produced from them.

Other Provisions

The amendment also (1) establishes a procedure for the controlled reopening of areas currently closed to surf clam fishing; (2) extends the portion of the year during which make-up periods can be claimed for fishing time lost due to bad weather to the months of November through April; (3) allows vessel operators to determine themselves if weather conditions are severe enough to claim a make-up period; (4) extends the surf clam fishing week to include Sunday; (5) expands the opportunity for vessel operators to change their surf clam fishing schedules; (6) exempts personal-use fishermen from the licensing requirements of the FMP; (7) eliminates the fee for a replacement permit; (8) revises the vessel marking requirements to conform to requirements of other mid-Atlantic fishing regulations; and (9) removes the termination date of the FMP, allowing it to continue indefinitely. Each modification is intended to increase the operational flexibility of fishermen and processors under the management program. The modifications will reduce the burden of management on the public affected directly and indirectly by the FMP.

Public Comment on the Proposed Regulations

Several comments were received concerning the regulations published in proposed form. Two commenters expressed their opposition to the 5½ inch minimum size limit for surf clams. The importance of the size limit was reconfirmed by a vote of the Council's Surf Clam Industry Advisory Subpanel on October 30, 1981. NOAA believes reduction of the minimum size would probably require a reduction of the annual surf clam quota to account for lost yield from the fishery. A quota reduction at this time would likely result in significant economic hardship for major segments of the industry; therefore the minimum size limit is not reduced.

One commenter opposed the limited entry option proposed by the Council. That option is under continuing review and its implementation is not a part of this action.

One commenter suggested the bad weather make-up provision should be allowed the year around. The make-up period was increased from four to six months as a part of this amendment. Further expansion would probably result in income redistribution among the various fleet sectors which would not be offset by the benefits of a make-up period during the spring and summer. The make-up period is not changed from six months.

The U.S. Coast Guard pointed out incorrect coordinates delineating the New England and mid-Atlantic surf clam management areas. Those coordinates have been corrected. Other Coast Guard comments were of an advisory nature. The Council requested confirmation of its consultative role in the quota setting process. Language to confirm this role has been inserted in the appropriate section of the regulation.

A number of revisions have been made to clarify intent and procedure within the regulations. Section 652.22(a) has been slightly revised to reflect the intent of the Council and industry to have greater continuity of fishing time throughout the fishing year. Fishing time will be adjusted only when necessary to correct harvest rates relative to available allocations. Section 652.25(a)(2) has been expanded to clarify the original intent of the Council and its Advisory Subpanel and to reflect enforcement procedures refined during the emergency implementation period for the minimum size for surf clams. All surf clams in possession will be deemed in violation if any cage or surf clams not reserved from inspection exceeds the tolerance for undersized surf clams.

This amendment to the FMP was approved by the Assistant Administrator under section 304(a) of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Further Review of the Limited Entry Portion of the FMP

The Council's amendment includes a provision to establish a permanent limited entry program for vessels in the surf clam fishery. A moratorium, preventing the issuance of surf clam permits to vessels that cannot demonstrate historical involvement in the surf clam fishery, has been in effect since 1977. The proposed permanent limited entry program is intended to facilitate management, prevent further overcapitalization and overfishing, encourage stability in the fishing community, set the stage for relaxation of other management measures, allow traditional operators to recover some of their "investment" in the management program, and allow new entry while preventing addition of excessive fishing effort.

The issues raised by a limited entry system are important and deserve full consideration. The proposed limited entry portion of the plan was served to allow independent review without the pressure of a short deadline.

The current vessel moratorium has been extended by the Secretary until a thorough review of the proposal can be completed. This course of action was endorsed by the Council at its meeting on July 9, 1981. The Council's Surf Clam Industry Advisory Subpanel, which represents a broad spectrum of individuals and firms affected by the surf clam management program, supported the Council's endorsement.

National Environmental Policy Act of 1969.

Amendment 3 and the amendment made under Section 304(c) of the Magnuson Act basically continue the resource conservation program initiated by the FMP. A supplemental environmental impact statement prepared for the amendment (47 FR 2399) concludes the management program will provide for the long-term viability of the resources while minimizing negative impacts on the surf clam fishery and permitting full development of the ocean quahog fishery.

Classification

The Administrator, NOAA, has determined that this amendment of the FMP is not a major rule under E.O. 12291. The action is expected to have an incremental effect on the economy of less than one million dollars annually. The action is not expected to lead to an increase in costs or prices of more than 10 percent. The action will not adversely affect competition, investment, or productivity. Each of the recommended management measures is likely to produce net benefits to the fishery, the region, and the national economy. Each has positive resource conservation impacts that should increase the long term supply of clams, reduce their prices, and increase employment. The measures have positive general impacts in that they tend to reduce fluctuations in the fishery and encourage high value uses of the resource.

The General Counsel of the Department of Commerce has determined that this amendment will not have a significant economic impact on a substantial number of small business entities and, therefore, does not require a regulatory flexibility analysis. The regulatory impact review prepared for this action found that this rule is expected to result in net benefits to the fishery, which is conducted primarily by small businesses.

Reporting and recordkeeping requirements proposed here are essentially the same as those published January 3, 1980. Office of Management and Budget (OMB) approval numbers have been obtained for the Surf Clam and Ocean Quahog FMP under: 0648–0016, the logbook family of forms; 0648–0013, dealer reports; and 0648–0097, vessel permits. An Information Collection Budget and SF–83 package have been submitted to OMB for two information collections included in 50 CFR 652: for the extended period during which fishermen can claim a makeup day due to bad weather; and for the Notice of Intent to Process form completed by processors to provide the annual estimate of processing capacity. The processor reporting requirement was established by Amendment No. 1 to the FMP, which was implemented in October 1, 1979 (44 FR 55903). Information is reported on an annual basis, and includes monthly estimates of processing employment and plant production capacity for the regulated species. This information is needed to assess and specify the capacity and extent to which U.S. processors will process the regulated species as required under section 303(a)(4)(C) of the Magnuson Act.

The 30-day APA cooling off period has been waived for good cause. Prompt implementation of final regulations will avoid a hiatus in the management regime. Further, these regulations are essentially the same as those which have been in effect since October 24, 1971. The Administrator has determined that the emergency provisions of section 8 of E.O. 12291 apply to this final rule and, as such, it is exempt from pre-publication review by the Office of Management and Budget.

Dated: January 26, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

50 CFR Part 652 is revised to read as follows:

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

Subpart A—General Provisions

Sec.
652.1 Purpose.
652.2 Definitions.
652.3 Foreign fishing.
652.4 Permits.
652.5 Recordkeeping and reporting requirements.
652.6 Vessel identification.
652.7 Prohibitions.
652.8 Facilitation of enforcement.
652.9 Penalties.

Subpart B—Management Measures

652.21 Catch quotas.
652.22 Effort restrictions.
652.23 Closed areas.
652.24 Vessel moratorium.
652.25 Size restrictions.

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

Subpart A—General Provisions

§ 652.1 Purpose.

This Part regulates fishing for surf clams (*Spisula solidissima*) and ocean quahogs (*Arctica islandica*) in the Atlantic Ocean fishery conservation zone.

§ 652.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this Part have the following meaning:

(a) *Act* means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

(b) *Assistant Administrator* means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

(c) *Authorized officer* means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any certified Enforcement or Special Agent of the NMFS;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(4) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (c)(1) of this definition.

(d) *Bushel* means a standard unit of measure presumed to hold 1.88 cubic feet of surf clams or ocean quahogs in the shell.

(e) *Cage* means a standard unit of measure presumed to hold 32 bushels of surf clams or ocean quahogs in the shell. The outside dimensions of a standard cage generally are 3′ wide, 4′ long and 5′ high.

(f) *Council* means the Mid-Atlantic Fishery Management Council.

(g) *Directed fishery* means, with respect to any species, a fishery conducted for the purpose of catching that species.

(h) *Fish* means any finfish, mollusks (including surf clams and ocean quahogs), crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(i) *Fishery Conservation Zone (FCZ)* means the zone contiguous to the territorial sea of the United States, the inner boundary of which is a line coterminous with the seaward boundary of each of the coastal States and the outer boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

(j) *Fishing* means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraph (j) (1), (2), or (3) of this section.

The term "fishing" does not include any scientific research activity which is conducted by any scientific research vessel.

(k) *Fishing trip* means a departure from port, transit to the fishing grounds, fishing, and discharge of any part of the catch on board.

(l) *Fishing vessel* means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(m) *Mid-Atlantic Area* means that portion of the FCZ in the Atlantic Ocean south of a rhumb line connecting the point 41°18.27′ N. latitude and 71°54.47′ W. longitude with the point 38°03.4′ N. latitude and 68°41.7′ W. longitude, the outward boundary of the FCZ.

(n) *New England Area* means that portion of the FCZ in the Atlantic Ocean north of a rhumb line connecting the point 41°18.27′ N. latitude and 71°54.47′ W. longitude with the outward boundary of the FCZ at 38°03.4′ N. latitude and 68°41.7′ W. longitude.

(o) *NMFS* means the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration.

(p) *Operator* means, with respect to any vessel, the master or other individual on board and in charge of that vessel.

(q) *Owner* means, with respect to any vessel:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage; or

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel.

(r) *Person* means any individual, corporation, partnership, association, or other entity.

(s) *Personal use* means harvest of surf clams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bushels per person per trip.

(t) *Regional Director* means the regional Director, Northeast Region, NMFS, Federal Building, 14 Elm Street, Gloucester, MA 01930–3799. Telephone 617–281–3600.

(u) *Secretary* means the Secretary of Commerce or the designee of the Secretary.

(v) *Vessel of the United States* means:

(1) A vessel documented or numbered by the Coast Guard under United States law; or

(2) A vessel, under five net tons, which is registered under the laws of any State.

§ 652.3 Foreign fishing.

Fishing for surf clams or ocean quahogs in the FCZ by any vessel other than a vessel of the United States is prohibited.

§ 652.4 Permits.

(a) *General.*—(1) *Requirement.* A vessel owner or operator must obtain a permit in order to:

(i) Conduct a directed fishery for surf clams or ocean quahogs within the FCZ, or

(ii) Land or transfer to another vessel any surf clams or ocean quahogs or part thereof caught within the FCZ.

(2) *Exemption.* Vessels taking surf clams or ocean quahogs for personal use are exempt from this section.

(b) *Eligibility.*—(1) *Surf clams—New England and Mid-Atlantic Areas.* A vessel is eligible for a permit to harvest surf clams in both the New England and Mid-Atlantic Areas if it meets any of the following criteria:

(i) The vessel has landed surf clams in the course of conducting a directed fishery for surf clams between November 18, 1976, and November 17, 1977; or

(ii) The vessel was under construction for, or was being rerigged for, use in the directed fishery for surf clams on November 17, 1977. For the purpose of this paragraph, "under construction" means that the keel had been laid, and "being rerigged" means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for surf clams; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity which involuntarily left the surf clam fishery during the moratorium, and both the entering and replaced vessels are owned by the same person.

(2) *Surf clams—New England Area only.* Any vessel of the United States is eligible for a permit allowing it to harvest surf clams in the New England Area only.

(3) *Ocean quahogs.* Any vessel of the United States is eligible for a permit allowing it to harvest ocean quahogs only.

(c) *Application.* Permit applications may be obtained by contacting the Regional Director. The owner or operator may apply for a permit by submitting an application form supplied by the Regional Director containing at least the following information:

(1) Names, mailing addresses, and telephone numbers of the owner and operator;

(2) The name of the vessel;

(3) The vessel's U.S.Coast Guard documentation number or State license number;

(4) Engine and pump horsepower;

(5) Homeport of the vessel;

(6) Directed fishery or fisheries;

(7) Fish hold capacity (in cages or bushels);

(8) Dredge size and number of dredges;

(9) Amount of surf clams and ocean quahogs landed between November 18, 1976, and November 17, 1977 (in bushels, if applicable);

(10) Number of fishing trips between November 18, 1976, and November 17, 1977;

(11) Date of beginning of construction or rerigging (if applicable);

(12) Signature of the owner or operator; and

(13) Any other information which may be necessary for the issuance or administration of the permit.

(d) *Issuance.* The Regional Director will issue a permit to each eligible vessel for which an application is submitted. The eligibility of a vessel to fish for surf clams will be determined consistent with this section. There will be no fee for the permit.

(e) *Appeal of denial of permit.* (1) Any applicant denied a permit by the Regional Director may appeal to the Assistant Administrator for review of the denial. Any such appeal must be in writing. Any of the following grounds may form the basis for review:

(i) Applicant believes denial was in error;

(ii) Applicant was prevented by circumstances beyond his control from meeting relevant criteria;

(iii) Applicant has new or additional information which might change the initial decision; or

(iv) Applicant can show that significant and unusual hardship will result from the denial.

(2) The appeal may be presented, at the option of the applicant, at a hearing before a person appointed by the Assistant Administrator to hear the appeal.

(3)The decision of the Assistant Administrator will be the final decision of the Department of Commerce.

(f) *Transfer.* A permit is valid only for the vessel for which it is issued.

(g) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit, the vessel, its gear and catch shall be subject to inspection upon request of any authorized official.

(h) *Expiration.* Except as provided in paragraph (h)(2), a permit will expire:

(1) When the owner or operator retires the vessel from the fishery (it is a rebuttable presumption that failure to land any surf clams or ocean quahogs for 52 consecutive weeks constitutes retirement from the fishery), or

(2) When the ownership of the vessel changes; however, the Regional Director may authorize continuation of a vessel permit for the surf clam fishery if the new owner so requests and the vessel meets the relevant criteria of eligibility set forth in § 652.4(b). Applications for continuation of a permit must be addressed to the Regional Director.

(i) *Sanctions.* Subpart D of 50 CFR 621 (Civil Procedures) governs the imposition of permit sanctions against a permit issued under this Part. As specified in that subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of any offense prohibited by the Act or these regulations; or if a civil

penalty or criminal fine imposed under the Act, and pertaining to a permitted vessel, is not paid.

§ 652.5 Recordkeeping and reporting requirements.

(a) *Dealers.*—(1) *Weekly report.* Any person who buys surf clams and ocean quahogs from a fishing vessel subject to these regulations shall provide at least the following information to the Regional Director on a weekly basis, on forms supplied by the Regional Director:

(i) Name and mailing address of dealer or processing plant;

(ii) Name and permit number of the vessel from which surf clams or ocean quahogs are landed or received;

(iii) Dates or purchases;

(iv) Number of bushels purchased, by species;

(v) Price per bushel, by species; and

(vi) Meat yield per bushel, by species.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section shall also provide the following information to the Regional Director on an annual basis, on forms supplied by the Regional Director.

(i) Number of dealer or processing plant employees during each month of the year just ended;

(ii) Number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended;

(iii) Plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; and

(iv) An estimate, for the next year, of the capacities described in paragraph (a)(2)(iii) of this section.

If the capacities described in paragraph (a)(2)(iii) of this section change more than ten percent during any year, the processor shall promptly notify the Regional Director of the change in capacity.

(3) *At-sea activities.* All persons purchasing, receiving, or processing any surf clams or ocean quahogs at sea for transport to any port of the United States must submit information identical to that required by paragraphs (a) (1) and (2) of this section and provide those reports to the Regional Director on the same frequency basis.

(b) *Owners and operators.*—(1) *Daily fishing log.* The owner or operator of any vessel conducting any fishing operations subject to these regulations shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least:

(i) Name and permit number of the vessel;

(ii) Total amount in bushels of each species taken;

(iii) Date(s) caught;

(iv) Time at sea;

(v) Duration of fishing time;

(vi) Locality fished;

(vii) Crew size;

(viii) Crew share by percentage;

(ix) Landing port;

(x) Date sold;

(xi) Price per bushel; and

(xii) Buyer.

(2) *When to fill in log.* To the extent possible, owners or operators shall fill out such logbooks before landing any surf clams or ocean quahogs at the end of any fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized officer, or by an employee of the NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the log, the owners or operator shall keep each logbook at the owner's or operator's principal place of business.

(5) *Weekly reports.* The owner or operator shall submit weekly reports to the Regional Director, on forms supplied by the Regional Director. If no fishing trip is made during a week, a report so stating must be submitted.

(6) *Annual reports.* All persons required to submit reports under paragraph (b) of this section shall submit annually to the Regional Director, on forms supplied by the Regional Director, at least the following information relating to vessel characteristics: name of the vessel, vessel's U.S. Coast Guard Guard documentation number or State license number, engine and pump horsepower, homeport of vessel, hold capacity (in bushels or cages), and dredge size and number of dredges.

§ 652.6 Vessel identification.

(a) *Official number.* The operator of each fishing vessel 25 feet in length or longer subject to these regulations shall display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. Vessels under 25 feet in length do not need to display any number. The official number is the documentation number issued by the U.S. Coast Guard or the certificate of number issued by a State or the Coast Guard for undocumented vessels.

(b) *Markings.* Such markings must be at least eighteen (18) inches in height for fishing vessels over 65 feet in length, and at least ten (10) inches in height for all other vessels over 25 feet in length. The official number must be permanently affixed to or painted on the vessel and must be block Arabic numerals of a color that contrasts with the background.

(c) *Duties of the operator.* The operator of each vessel shall:

(1) Keep the required identifying markings clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) *New Jersey vessels.* Instead of complying with paragraphs (a) and (b) of this section, vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that State.

§ 652.7 Prohibitions.

(a) No permit holder shall catch and retain on board any surf clams or ocean quahogs:

(1) During closed seasons; or

(2) In closed areas as specified in these regulations; or

(3) On days of the week in which fishing for these species is not authorized.

(b) No person shall fish for surf clams except during the authorized time period(s) assigned to the vessel he is operating.

(c) No person shall catch and retain on board any surf clams on other than an authorized surf clam fishing trip.

(d) No person shall possess, have custody of, or control of, ship, transport, offer for sale, deliver for sale, sell, purchase, import, export, or land, any surf clams, ocean quahogs, or parts thereof, which were taken in violation of the Act, these regulations, or any other regulations issued under the Act.

(e) No person engaged in the surf clam or ocean quahog fisheries as an owner or operator, or as a dealer, processor, buyer, or receiver shall unload or cause to be unloaded, or sell or buy, any surf clams or ocean quahogs whether on land or at sea, without preparing and submitting the documents required by § 652.5.

(f) No person shall:

(1) Refuse to permit an authorized officer to board a fishing vessel subject to such a person's control for purposes of conducting any search or inspection,

no matter where that vessel may be located, in connection with the enforcement of the Act, these regulations, or any other regulations issued under the Act;

(2) Forcibly assault, resist, oppose, impede, intimidate or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (f)(1) of this section;

(3) Resist a lawful arrest for any act prohibited by these regulations; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing or being advised by authorities that such other person has committed any act prohibited by these regulations.

(g) No person shall use any fishing vessel to engage in fishing without a permit, unless exempted under § 652.4(a)(2), or after the revocation, or during the period of suspension, of an applicable permit issued under § 652.4.

(h) No person shall alter, erase or mutilate:

(1) Any permit issued under § 652.4.

(2) Any letter of authorization issued under § 652.22.

(i) No person in the Mid-Atlantic Area shall have in his possession surf clams taken in violation of the size limit prescribed in § 652.25.

(j) No person shall violate any other provision of the Act, these regulations, or any applicable permit issued under § 652.4.

§ 652.8 Facilitation of enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by the authorized officer to facilitate safe boarding and inspection of the vessel, its gear, logbook, and catch for purposes of enforcing the Act and these regulations.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instructions. VHF–FM radiotelephone is the normal method of communicating between vessels. Should radiotelephone communication fail, however, other methods of communication including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which may be used, and are included here for the safety and information of fishing vessel operators:

(1) "L" means "You should stop your vessel instantly";

(2) "SQ3" means "You should stop or heave to; I am going to board you";

(3) "AA AA AA etc." is the call to an unknown station; to which the signaled vessel should respond by illuminating the vessel identification required by § 652.6.

(c) *Boarding.* The operator of a vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the authorized officer and his/her party to come aboard;

(2) Provide a safe ladder for the authorized officer and the boarding party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the authorized officer and his/her party and to facilitate the boarding.

§ 652.9 Penalties.

Any person or fishing vessel found to be in violation of these regulations, including the logbook and other reporting requirements, is subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, in 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and in other applicable law.

Subpart B—Management Measures

§ 652.21 Catch quotas.

(a) *Surf clams: Mid-Atlantic Area.* The amount of surf clams which may be caught in the Mid-Atlantic Area by fishing vessels subject to these regulations will be specified annually within the range of 1,800,000 and 2,900,000 bushels. This annual quota will be divided into equal quarterly quotas, the quarters being January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31. Each fishing quarter will begin on the first Sunday of the new calendar quarter.

(1) *Establishing Quotas.* Prior to the beginning of each year, the Regional Director will prepare a written report, based on the latest available stock assessment report prepared by the National Marine Fisheries Service, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to optimum yield;

(ii) Fishing mortality rates relative to optimum yield;

(iii) Magnitude of incoming recruitment;

(iv) Projected effort and corresponding catches; and

(v) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public Review.* Based on the information presented in the report, and in consultation with the Council, the Secretary will propose an annual surf clam quota and will publish it in the **Federal Register.** Comments on the proposed annual quotas may be submitted to the Regional Director within 30 days after publication. The Secretary will consider all comments, determine an appropriate annual quota, and publish the annual quota in the **Federal Register.**

(3) *Adjustments.* If the actual catch of surf clams in any one quarter falls more than 5,000 bushels short of the specified quarterly quota, the Regional Director will add the amount of the shortfall to the succeeding quarterly quotas. If the actual catch of surf clams in any quarter exceeds the specified quarterly quota, the Regional Director shall subtract the amount of the excess from the succeeding quarterly quotas.

(4) *Notice.* The Secretary will publish a notice in the **Federal Register** whenever an adjustment is made to the quarterly quota for surf clams. The Regional Director will send notice of any adjustment of the annual quota to each surf clam processor and to each licensed surf clam vessel operator.

(b) *Surf Clams: New England Area.* The amount of surf clams which may be caught in the New England Area by fishing vessels subject to these regulations will be specified annually between 25,000 and 100,000 bushels, using the procedures and criteria set forth in § 652.21(a).

(c) *Ocean Quahogs.* The amount of ocean quahogs which may be caught by fishing vessels subject to these regulations will be specified annually between 4,000,000 and 6,000,000 bushels, using the procedures and criteria set forth in § 652.21(a). If necessary, the Regional Director may establish quarterly quotas for ocean quahogs, which will be based on historical fishing patterns. In that event, the Secretary will publish notice of such quarterly quotas in the **Federal Register.** In the event that the Regional Director establishes quarterly quotas for ocean quahogs, if the actual catch of ocean quahogs falls more than 5,000 bushels short of the specified quarterly quota, he will add the amount of the shortfall to the succeeding quarterly quotas. If the actual catch of ocean quahogs in any quarter exceeds the specified quarterly quota, the Regional Director will

subtract the amount of the excess from the succeeding quarterly quotas.

§ 652.22 Effort restrictions.

(a) *Surf clams. Mid-Atlantic Area.*—(1) *The fishing week.* Fishing for surf clams will be authorized only during the period beginning 0001 hours Sunday and ending 1800 hours Thursday.

(2) *Hours.* The Regional Director will notify each owner or operator of a fishing vessel engaged in the surf clam fishery in the Mid-Atlantic Area concerning the allowable combinations of fishing periods for varying levels of allowable fishing time. All fishing periods will end at 1800 hours. The vessel owner or operator shall send the Regional Director written notice of the owner or operator's selection of allowable surf clam fishing periods for that vessel. All selections must be provided to the Regional Director no less than 15 days prior to the intended effective date. The Regional Director will send a letter of authorization to each owner or operator, stating the periods during which the vessel is authorized to fish for surf clams. The letter of authorization must be kept aboard the vessel at all times. Fishing may be conducted only during the times and under those conditions authorized by the Regional Director in the letter of authorization. Fishing for any part of an authorized period will be counted as one day of fishing. In this paragraph, "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as traveling to or from the fishing grounds. The presence of a vessel's fishing gear in the water at a time which is more than one-half hour before the beginning, or one-half hour after the end, of the vessel's authorized fishing period shall be prima facie evidence that the vessel is fishing in violation of these regulations.

(3) *Allowable fishing time.* The Regional Director may revise allowable fishing times (hours per week, hours per month, or hours per quarter) to allow fishing for surf clams to be conducted throughout the entire year with the minimum number of changes to fishing times.

(i) *Reduction.* If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota for surf clams [as adjusted under § 652.21(a)(3)] probably will be exceeded, the Secretary may reduce the allowable fishing time.

(ii) *Increase.* If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota of surf clams [as adjusted under § 652.21(a)(3)] probably will not be harvested, and that the catch rate has not diminished as a result of a decline in abundance of stocks of surf clams, the Secretary may increase allowable fishing time to facilitate the harvest of the full quarterly quota.

(4) *Make-up periods.* During November, December, January, February, March, and April, fishermen may claim a make-up period, if in the opinion of the vessel operator, weather or sea conditions would prevent effective fishing or endanger the vessel or crew.

(i) To claim the make-up period, the vessel owner or operator must contact the NMFS before the scheduled authorized fishing period starts. The Regional Director will notify each vessel owner or operator in writing as to the procedure to follow in contacting NMFS.

(ii) The make-up period will be equal in length to the scheduled authorized fishing period, and will begin 24 hours after the scheduled beginning of said period, except that if the make-up period could not then be completed before the end of the fishing week on Thursday at 1800 hours, then the make-up period begins on the following Sunday.

(iii) Before using this make-up provision, each vessel owner must notify the Regional Director, in writing, of the port from which the vessel fishes. If that port changes, the vessel owner must promptly notify the Regional Director of the change, in writing.

(iv) Any vessel which uses a make-up period without claiming it under this procedure, or which fishes under a scheduled authorized fishing period for which it has claimed a make-up period, is liable to forfeit its use of the make-up provision in the future; the vessel and its owner or operator also may be subject to other penalties as prescribed in § 652.9 of these regulations.

(b) *Surf Clams. New England Area.*—(1) *Allowable fishing time.* Fishing for surf clams will be allowed seven days per week.

(2) *Revisions.* When 50 percent of the quota of surf clams established under § 652.21(b) for the New England Area has been caught, the Regional Director will, on review of available information and public comment, determine whether the total catch of surf clams during the remainder of the year will exceed the annual quota. If the Regional Director determines that the quota probably will be exceeded, the Secretary may reduce the number of days per week, or establish authorized periods, during which fishing for surf clams is permitted.

(c) *Ocean Quahogs.*—(1) *Allowable fishing time.* Fishing for ocean quahogs will be allowed seven days per week.

(2) *Revisions.* When 50 percent of the quota of ocean quahogs for any time period indicated in § 652.21(c) above has been caught, the Regional Director will, on review of available information and public comment, determine whether the total catch of ocean quahogs during the applicable time period will exceed the quota for that time period. If the Regional Director determines that the quota will be exceeded, the Secretary may reduce the number of days during which fishing for ocean quahogs is allowed.

(d) *Closures.* If the Regional Director determines (based on logbook reports, processor reports, vessel inspections, or other information) that the quota for surf clams or ocean quahogs for any time period will be exceeded, the Secretary shall publish a notice in the **Federal Register** stating the determination and stating a date and time for closure of the fishery.

(e) *Notices.* The Secretary will publish a notice in the **Federal Register** of any change in allowable fishing times. The Regional Director will send notice of any closure or any change in allowable fishing times to each surf clam or ocean quahog processor and to each surf clam or ocean quahog permit holder.

(f) *Presumption.* The presence of surf clams or ocean quahogs aboard any vessel engaged in the surf clam or ocean quahog fishery, or the presence of any part of a vessel's gear in the water more than 12 hours after a closure occurs under this section, will be prima facie evidence that such surf clams or ocean quahogs were taken in violation of these regulations.

§ 652.23 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Secretary determines that the adverse environmental conditions have been corrected. If additional areas, due to the presence or introduction of hazardous materials or pollutants, are identified as being contaminated, they may be closed by notice published by the Secretary, after a public hearing is held to discuss and assess the effects of such a closure. The areas currently closed are described as follows:

(1) *Boston Foul Ground.* A waste disposal site known as the "Boston Foul

Ground" and located at 42°25'36" N. latitude and 70°35'00" W. longitude with a radius of one nautical mile in every direction from that point.

(2) *New York Bight.* A polluted area and waste disposal site known as the "New York Bight Closure" and located at 40°25'04" N. latitude and 73°42'38" W. longitude and with a radius of six nautical miles in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31'00" N. latitude and 73°43'38" W. longitude directly toward Atlantic Beach Light in New York to the limit of state territorial waters of New York; and a line from a point on the arc at 40°19'48" N. latitude and 73°45'42" W. longitude to a point at the limt of the state territorial waters of New Jersey at 40°14'00" N. latitude and 73°55'42" W. longitude.

(3) *Philadelphia and du Pont.* A pair of areas used for disposal of chemicals and sewage sludge known as the "Philadelphia and du Pont Closure" and located at 38°23'15" N. latitude and 74°14'45" W. longitude; and 38°32'30" N. latitude and 74°20'00" W. longitude with a radius of four and three-quarters nautical miles in every direction from those two points.

(4) *106 Dumpsite.* A toxic industrial dump site known as the "106 Dumpsite" and located between 38°40'00" N. latitude, and 39°00'00" N. latitude and between 72°00'00" W. longitude and 72°30'00" W. longitude.

(b) *Areas closed because of small surf clams.* Certain areas are closed because they contain small surf clams.

(1) *Closure.* The Secretary may close an area to surf clam and ocean quahog fishing if he determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surf clams of which:

(i) 60 percent or more are smaller than 4½ inches in size, and;

(ii) Not more than 15 percent are larger than 5½ inches in size. (Sizes are measured at the longest dimension of the surf clam.)

(2) *Reopening.* The Secretary may reopen areas or parts of areas closed under paragraph (b)(1) if he determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is 5½ inches or more; or

(ii) The yield or rate of growth of the dominant size class in the area to be reopened would be significantly enhanced through selective, controlled or limited harvest of surf clams in the area.

(3) *Control of reopened areas.* The Secretary will control the harvest of surf clams from reopened areas separate from the management of the general fishery until the catch per unit of effort in the reopened area is comparable to the average catch per unit of effort in the general fishery, at which time the reopened area will become part of the general fishery. Any of the following mechanisms may be used to control harvests from the reopened areas:

(i) The Regional Director may request that vessel operators announce their intent to fish within reopened areas.

(ii) The Regional Director may, based on reference to survey information, select an appropriate range of allowable fishing time for the reopened area to achieve parity with fishing practices in the general fishery. The range will be published for notice and comment subject to the procedures established in paragraph (c) of this section. The Regional Director may subsequently adjust fishing time within the range, based on logbook information, to maintain parity with the general fishery. These adjustments while published by notice in accordance with paragraph (c) of this section.

(iii) The Regional Director may set a schedule for vessels to operate in reopened areas if he determines that the number of vessels planning to operate simultaneously in a reopened area exceeds the number which can safely be accommodated in the area, or which can effectively be monitored by enforcement officers.

(iv) If the Regional Director determines, based on resource survey information, that the yield of surf clams in a reopened area will be enhanced by selective thinning of the surf clam population in the area, he may temporarily suspend the surf clam size limit in that area. Areas of this type will be identified and defined in accordance with the notice and comment procedures established in paragraph (c) of this section.

(c) *Procedure.* The Regional Director may hold a public hearing on the proposed closure or reopening of any area under paragraphs (a) or (b) of this section. The Secretary will publish notice of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Director within 30 days after publication. The Secretary will consider all comments and publish the final notice of closure or reopening, and any restrictions on harvest, in the **Federal Register.** Any adjustment to harvest restrictions in a reopened area will be made by **Federal Register** notice. The Regional Director will send notice of any action under this paragraph to each surf clam or ocean quahog processor and to each surf clam or ocean quahog permit holder.

(d) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel, or the presence of any part of the vessel's gear in the water, in closed areas is prima facie evidence that such clams or quahogs were taken in violation of these regulations.

§ 652.24 Vessel moratorium.

The moratorium that became effective on November 17, 1977, prohibiting the entry of additional vessels into the surf clam fishery, shall remain in effect in the Mid-Atlantic Area until replaced by a revised limited-entry system.

§ 652.25 Size restrictions.

(a) *Minimum length.* A minimum size limit for surf clams of 5½ inches in length is imposed on the Mid-Atlantic Area fishery with the following exceptions:

(1) Ten percent of all full cages in possession, to the nearest whole cage (or at least one cage), can be withheld by the operator from inspection by an authorized officer; and

(2) As many as 240 surf clams in any full cage inspected by the authorized officer may be less than 5½ inches in length. If any inspected cage is found to be in violation, all cages in possession and not withheld subject to paragraph (a)(1) of this section will be deemed in violation of the size limit.

(b) *Measurement.* Length is measured at the longest dimension of the surf clam.

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50 CFR Part 661

Ocean Salmon Fisheries Off the Coasts of California, Oregon, and Washington

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical changes and correction.

SUMMARY: NOAA deletes portions of six sections of the ocean salmon fishing regulations pertaining to Subarea C (the fishery conservation zone adjacent to California) that were temporarily effective for the 1981 ocean salmon fishing season and were replaced with equivalent portions of 1980 regulations that apply to the same area. Those

portions of the 1980 regulations are now republished as technical changes. Further, NOAA makes one correction to the ocean salmon fishing regulations.

EFFECTIVE DATE: January 26, 1982.

ADDRESS: H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.W., BIN C15700, Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206–527–6150.

SUPPLEMENTARY INFORMATION: NOAA issued a rulemaking on June 5, 1981 (46 FR 30633), extended it for 45 days on July 20, 1981 (46 FR 37705) and made it final on September 4, 1981 (46 FR 44989) to implement the 1981 amendment to the fishery management plan for the salmon fisheries off the coasts of California, Oregon and Washington. Regulations at 50 CFR 661.4, corrected on July 20, 1981 (46 FR 37705), specify that, "These regulations shall be effective until superceded or otherwise modified, except that those portions of §§ 661.10–661.12 relating to Subarea C (the FCZ adjacent to California) shall remain in effect no longer than the 1981 fishing season, after which time those portions of §§ 661.10–661.12 of the 1980 ocean salmon fishing regulations (45 FR 50764) relating to the FCZ adjacent to California shall again become effective for that area unless superceded or otherwise modified."

Later, NOAA was informed by the General Services Administration, Office of the Federal Register, that the amendatory language of §661.4 was not sufficient to revive those portions of the 1980 regulations relating to open seasons and harvest guidelines off California for **Federal Register/Code of Federal Regulations** publication purposes. NOAA was advised to publish another document to indicate the appropriate changes in the text of §§ 661.10–661.12. In order to avoid confusion and misunderstanding, it should be noted that the FCZ adjacent to California was divided into two management subareas in 1980 (designated D and E), and only one in 1981 (designated C). Reinstatement of the 1980 regulations for the FCZ adjacent to California involved reinstatement of the two management subareas; as republished, those two subareas are redesignated as C and D to reflect proper alphanumeric sequence. Thus, portions of §§ 661.5, 661.6 and 661.7 are republished and amended to reflect the reinstatement and redesignation of the subareas off California.

Finally, in §661.10(b)(1) the phrase "need to be affixed" is corrected to read "need not be affixed;" the latter phrase was how the text of the regulation read as filed with the **Federal Register.**

This action is exempt from provisions of Executive Order 12291, because it represents a technical change and correction. This action simply effects the technical change discussed at 46 FR 30633.

Dated: January 26, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF CALIFORNIA, OREGON, AND WASHINGTON

For the reasons discussed in the preamble, 50 CFR Part 661 is amended as follows:

1. The authority citation for Part 661 reads as follows:

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

§ 661.5 [Amended]

2. § 661.5 is amended by changing the number of management subdivisions of the Fishery Management Area from "three" to "four" in paragraph (t).

3. § 661.6 is amended by revising paragraph (a)(3)(ii) and by adding a new paragraph (a)(4), thereby republishing the reinstatement of two subareas off California, to read as follows:

§ 661.6 Salmon management sub-areas.

(a) * * *

(3) * * *

(ii) Southern Boundary: A line extended due west from Cape Vizcaino, California at 39°43′30″ N. latitude.

(4) Sub-area D:

(i) Northern Boundary: A line extended due west from Cape Vizcaino, California at 39°43′30″ N. latitude.

(ii) Southern Boundary: The United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35′22″ N. lat., 117°27′49″ W. long;
32°37′37″ N. lat., 117°49′31″ W. long;
31°07′58″ N. lat., 118°36′18″ W. long;
30°32′31″ N. lat., 121°51′58″ W. long;

* * * * *

§ 661.7 [Amended]

4. § 661.7 is amended, by substituting the phrase "Sub-Areas A through D" for the phrase "Sub-Areas A through C" in the text preceding paragraph (a).

5. § 661.10 is amended, by revising the title of paragraph (a)(3) and by revising paragraph (a)(3)(iii); by adding a new paragraph (a)(4); by substituting the phrase "Subareas C and D" for the phrase "Subarea C" in paragraphs (b)(1) and (b)(2), and the table in paragraph (c); and by substituting the phrase "need not be affixed" for the phrase "need to be affixed" in paragraph (b)(1), thereby republishing the reinstatement of the 1980 commercial seasons off California and making the correction identified in the preamble, to read as follows:

§ 661.10 Commercial fishing.

(a) * * *

(3) Sub-Area C (Oregon-California border to Cape Vizcaino): * * *

(iii) The season for all salmon species, including coho, shall begin on July 16, and terminate on September 30.

(4) Sub-Area D (Cape Vizcaino to the U.S.-Mexico border):

(i) The season for all salmon species except coho, shall begin on May 1 and terminate on May 15.

(ii) The season for all salmon species, including coho, shall begin on May 16. This early season shall terminate on May 31.

(iii) The season for all salmon species, including coho, shall begin on July 1, and terminate on September 30.

* * * * *

6. § 661.11 is amended, to republish the reinstatement of the 1980 recreational season off California, by substituting the phrase "Subareas C and D" for the phrase "Subarea C" in paragraphs (b)(2) and (b)(3) and in the table in paragraph (c); and by revising paragraph (a)(4) to read as follows:

§ 661.11 Recreational fishing.

(a) * * *

(4) In Sub-areas C and D the season for all salmon species shall begin on February 17, and terminate on October 13.

* * * * *

§ 661.12 [Amended]

7. § 661.12 is amended to republish the deletion of harvest guidelines off California, by removing paragraph (a)(3), by removing from paragraph (a)(4) the parenthetical clause. "[for the area described in Paragraph (a)(3) of this section, the Southwest Regional Director of the National Marine Fisheries Service shall make the projections]"; by removing paragraph (a)(5); by removing from paragraph (a)(6) the final sentence; and by redesignating paragraphs (a)(4), (a)(6) and (a)(7) as paragraphs (a)(3), (a)(4), and (a)(5), respectively.

[FR Doc. 82-2359 Filed 1-26-82; 3:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 20
Friday, January 29, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

Programs for Specific Positions and Examinations: Administrative Law Judges

AGENCY: Office of Personnel Management (OPM).

ACTION: Proposed Rulemaking.

SUMMARY: OPM proposes to make clear by regulation the practice which was adopted subsequent to the Civil Service Reform Act to provide a mechanism within OPM by which an appplicant for an administrative law judge register who fails to obtain a sufficient numerical rating to attain eligible status may appeal a determination of ineligibility. It also proposes to delete from the regulations the prohibition on agency use of the word "judge" in titles other than that of "administrative law judge".

DATE: Any interested party may submit written comments regarding this proposal. To be considered, comments must be received on or before March 30, 1982.

ADDRESS: Send or deliver written comments to the Assistant Director for Administrative Law Judges, Office of Personnel Management, 1900 E Street, NW., Room 2470, Washington, D.C. 20415. Comments will be available for public inspection at the above address between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judge Marvin H. Morse, 202–632–4638.

SUPPLEMENTARY INFORMATION: Subsequent to enactment of the Civil Service Reform Act, OPM selected a methodology for internal appeals from the actions of the Office of Administrative Law Judges arising out of applications for an administrative law judge register. That methodology is routinely available to failed applicants who are advised upon notification of ineligibility of the opportunity to perfect timely administrative appeals. This regulation would confirm the availability of that appellate opportunity.

Title 5, CFR 930.203a continues to contain a prohibition against the use by agencies of the word "judge" for positions other than administrative law judge. That prohibition is inconsistent with the December 8, 1976, opinion letter of the Attorney General to the effect that only the title "administrative law judge" is preempted by OPM's responsibilities under title 5, United States Code. Accordingly, for accuracy and to avoid unnecessary confusion as has arisen in the past, that part of 5 CFR 930.203a as was overtaken by that opinion would be deleted. The title "administrative law judge" as ratified by Pub. L. 95–251, March 27, 1978, following adoption of the title by the Civil Service Commission in 1972, is retained for those persons appointed pursuant to 5 U.S.C. 3105.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

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

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

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

Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities, including businesses, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Accordingly, OPM is amending Part 930 of Title 5 of the Code of Federal Regulations by revising § 930.203(a) and § 930.203a to read as follows:

§ 930.203 Appointment.

(a) *Eligible rating.* An applicant for an administrative law judge position who meets the minimum requirements for entrance to the examination and attains a numerical rating determined by OPM as sufficient to produce an adequate register is eligible for appointment. An applicant who obtains an ineligible rating or an applicant who is dissatisfied with his or her final rating may appeal the rating to the Administrative Law Judge Rating Appeals Panel, Office of Personnel Management, Washington, D.C. 20415, within 30 days from the date of final action by the Office of Administrative Law Judges, or such later time as may be allowed by the Panel.

* * * * *

§ 930.203a Title of Administrative Law Judge.

The title, "administrative law judge" is the official class title for an administrative law judge position. Each agency shall use only this official class title for personnel, budget, fiscal and all other purposes.

(5 U.S.C. 1305, 3105)

[FR Doc. 82–2332 Filed 1–28–82; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1097, 1102, and 1108

[Docket No. AO–219–A36, AO–237–A30, and AO–243–A34]

Milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision provides certain changes in the present provisions of the Memphis, Fort Smith and Central Arkansas orders. For all three orders, the decision provides that a charge on overdue accounts be added, that the partial payment rate for producer milk during August–February be increased $1 per hundredweight, and that the maximum charges for order administration and marketing services be established at 6 and 7 cents per hundredweight, respectively. Under the Memphis and Central Arkansas orders, the decision changes the method of payment by plant operators for bulk milk purchased from a cooperative's pool plant. Under the Fort Smith and Central Arkansas orders, the decision provides that handlers who are more than 3 days late in the payment of an order obligation shall channel their payments to producers through the market administrator for 3 months. Under the Central Arkansas order, changes are made in the supply plant pooling qualifications, the diversion limitations on producer milk, and the price adjustments applicable at certain plant locations. This decision is based on industry proposals considered at a public hearing held April 15–17, 1980. The changes are necessary to reflect current marketing conditions and to assure orderly marketing conditions in the respective areas.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4824.

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

Prior documents in this proceeding: Notice of Hearing—issued March 26, 1980; published March 31, 1980 (45 FR 20888). Supplemental notice of hearing—issued April 7, 1980; published April 10, 1980 (45 FR 24492). Partial decision—issued July 14, 1980; published July 18, 1980 (45 FR 48159). Final order— issued July 28, 1980; published July 31, 1980 (45 FR 50704). Recommended decision—issued on September 22, 1981; published September 29, 1981 (46 FR 47588).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Memphis, Tennessee, on April 15–17, 1980 (45 FR 24492).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on September 22, 1981, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

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

1. Issue No. 1. *Partial payments to producers and cooperative associations under the Memphis, Fort Smith and Central Arkansas orders.*—Two new paragraphs are inserted after paragraph 21; paragraph 24 is revised; four new paragraphs are inserted after paragraph 24.

2. Issue No. 2. *Charges on overdue accounts under the Memphis, Fort Smith, and Central Arkansas orders.*—Five new paragraphs are added at the end.

3. Issue No. 12(a). *Miscellaneous changes in the Central Arkansas order.* (vi) *Producer milk.*—A new paragraph is inserted after paragraph 6.

4. Issue No. 12(c). *Miscellaneous changes in the Fort Smith and Central Arkansas orders.*—A new paragraph is added at the end.

5. Issue No. 12(d). *Miscellaneous changes in the Memphis and Central Arkansas orders.*—A new paragraph is added at the end.

6. Issue No. 12(e). *Miscellaneous changes in the Memphis, Fort Smith and Central Arkansas orders.*—Two new paragraphs are added at the end.

The material issues on the record relate to:

1. Partial payments to producers and cooperative associations under the Memphis, Fort Smith, and Central Arkansas orders.

2. Charges on overdue accounts under the Memphis, Fort Smith, and Central Arkansas orders.

3. Maximum administrative assessment rate under the Memphis, Fort Smith, and Central Arkansas orders.

4. Maximum marketing service deduction under the Fort Smith and Central Arkansas orders.

5. Payment of producers and cooperative associations through the market administrator under the Fort Smith and Central Arkansas orders.

6. Payment for milk from cooperative association plants under the Memphis and Central Arkansas orders.

7. Pool plant "lock-in" provision under the Central Arkansas order for distributing plants.

8. Pool supply plant qualifications under the Central Arkansas order.

9. Quantity limits and point of pricing on diversions of producer milk under the Central Arkansas order.

10. Location adjustment provisions of the Central Arkansas order.

11. Location adjustment provisions of the Memphis order.

12. Miscellaneous changes.

13. Whether an emergency exists to warrant the omission of a recommended decision on issues Nos. 7 and 11.

A prior decision dealt with issues Nos. 7, 11, and 13. The remaining issues of the hearing are considered in this 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. *Partial payments to producers and cooperative associations under the Memphis, Fort Smith and Central Arkansas orders.* A proposal requiring handlers under the Memphis, Fort Smith and Central Arkansas orders to make a second partial payment each month for milk received from producers should not be adopted. A proposal to increase the current partial payment rate during the months of August through February by $1.00 per hundredweight should be adopted. The Memphis order should be further modified to permit deductions authorized by the producer to be made from the partial payment to such producer. The Fort Smith order should be further modified to permit deductions to be made from both the partial and final payments to producers.

The three orders currently require that a handler make 1 partial payment and a final payment for milk received from producers during each month. The rate of the partial payment under the three orders is the Class III price for the preceding month. The amount of the partial payment due each producer is determined by multiplying the rate of such payment by the hundredweight of milk received from such producer during the first 15 days of the month. Of the 3 orders, only the Central Arkansas order specifies that the partial payment may be reduced to reflect deductions

authorized by the producer. The final payment to producers under the 3 orders is determined by multiplying the uniform price(s) for milk, or base milk and excess milk, adjusted by the butterfat differential and location adjustments to producers by the respective hundredweights of milk received from each producer during the month. The payments are then reduced by the amount of the partial payment made for milk received during the first 15 days of the month. The Memphis and Central Arkansas orders specify that the final payment due each producer may be reduced by deductions authorized by such producer.

Associated Milk Producers, Inc. (AMPI), a cooperative association representing the majority of the producers supplying handlers regulated under the 3 orders, proposed that each of the orders be revised to require a handler to make 2 partial payments and a final payment for milk received each month from producers. The rates proposed for the two partial payments during the months of March through July would be the previous month's Class III price. During the months of August through February, the partial payment rates would be the previous month's Class III price plus one dollar. The rates during the months of August–February would be further adjusted by the zone or location adjustment applicable at the receiving plant. Under the cooperative's proposal, the two partial payments due the producer could be further reduced by the amount of deductions authorized by the producer to the extent that deductions to assignees have been paid by the handler prior to the date payment is otherwise due the producers.

The cooperative proposed that final payment to producers be at the uniform price(s) for the applicable month adjusted for the butterfat content of the milk and the location of the receiving plant. Deductions from the final payment to producers would be made for the two partial payments, any authorized deductions, and marketing services performed on behalf of such producers.

For milk delivered during the first 15 days of the month, the cooperative proposed that a handler make a partial payment to the market administrator for such milk by the 23rd of the month. If the handler received milk directly from producers and a cooperative is not marketing their milk, the handler could make payment to the individual producers on or before the 23rd of the month in lieu of making such payments to the market administrator.

AMPI proposed that on the 24th of the month, the market administrator transmit handler payments for milk of producers to cooperative associations on behalf of their member producers and to a handler who elects to make payment to individual producers. In making such payments the market administrator would remit to the cooperative and such handler partial payments received from handlers for milk delivered during the first 15 days of the month. Handlers receiving payment from the market administrator to pay individual producers would be required to make such partial payments on or before the 25th of the month. On the 25th of the month, the market administrator would then make partial payment to producers who are not receiving payments from either a cooperative association or a handler.

For milk received during the second half of the month, the cooperative proposed that a handler make partial payment for such milk on or before the 8th of the month to the market administrator or to the individual producers. On the 9th of the month, the market administrator would transmit to a cooperative association the partial payment due its members. A handler who elects to pay individual producers would also have the option of transmitting to the market administrator by the 8th day the second partial payment due the individual producers. The market administrator would then return such funds to the handler by the 9th day. The market administrator and the handler receiving partial payment funds from the market administrator to pay producers would be required to make payment to the individual producers on the 10th of the month.

The cooperative proposed that a final payment for producer milk received during the month be made to the market administrator by the 20th of the following month. A handler who elects to pay individual producers directly instead of making such payment to the market administrator could do so by making final payment to such producers by the 20th of the month. On the 21st of the month, the market administrator would pay a cooperative the amount due the members of the cooperative and pay to the handler who elects to pay individual producers the amount due the individual producers. The market administrator and the handler receiving payment funds from the market administrator would then make the final payment to individual producers on the 22nd of the month.

Proponent cooperative proposed the revised payment procedure as a means of requiring handlers to pay producers for milk on a more current basis. Its spokesman indicated that under the present payment plan producers are now paid from 15 to 30 days late for milk produced during the first 15 days of the month. At the time of final payment, producers are paid from 15 to 45 days late for milk produced during the preceding month. The cooperative held that producers should not be required to wait such lengthy periods of time for the money due them from handlers. The spokesman stated that under the current payment plan producers have to forgo the use of funds invested in the dairy operation or pay interest upon the money borrowed for such capital investment. For this reason, proponent held that an accelerated rate of payment by the handler for milk received from producers was warranted.

AMPI also proposed that the partial payment rates in each of the 3 orders for the months of August through February be the previous month's Class III price plus 1 dollar. Such price would then be further adjusted by the location adjustment applicable at the receiving plant. The spokesman for the cooperative indicated that the amount proposed to be paid by the handlers to the producers for the months of August through February represents approximately 95 percent of the uniform price paid to producers during such months in 1978 and 1979. No increase was proposed in the current partial payment rate for the months of March through July because of the possibility that the uniform price might not exceed the Class III price for the previous month by $1. The spokesman noted that in prior years the difference between the uniform price for the current month and the Class III price for the preceding month during the months of March-July was less than during other months of the year because of the general seasonal trend in the Minnesota-Wisconsin price series on which the Class III price is based.

A spokesman for the Milk Industry Foundation (MIF) and the International Association of Ice Cream Manufacturers (IAICM) opposed the proposals to modify the 3 orders to require 2 partial payments and a final payment each month. The principal basis for the handlers' opposition to the proposed payment plan was that it would create a cash flow problem for them. The handlers held that the proposed payment plan would require them to make payment to producers prior to the time in which they could receive, package, distribute, invoice and collect for the milk products sold. Their spokesman noted that if the proposals are adopted, processors will either have to use their own cash reserves or

borrow the funds needed to meet the accelerated payment procedure. The increased cost to the handler would then be passed on to the consumers. Handlers also claimed that the extra partial payment would increase their office costs due to the increased reporting requirements and require additional audit work by the market administrator.

The handlers' spokesman opposed the proposed $1 per hundredweight increase in the partial payment rate for the months of August-February. He opposed the increase on the basis that it would require plants with a high Class II/Class III operation to pay in excess of their obligations at the class prices under the order and would accelerate handler payments to producers.

The representative of a pool plant operator in the Memphis market also opposed the addition of a second partial payment and an increase in the partial payment rates. He noted that, while both producers and handlers are faced with cash flow problems, handlers are burdened at the time with a disproportionate share of such problems. He indicated that an economic slowdown and rising interest rates have significantly delayed payments to milk handlers while producers have continued to receive timely payments because of payment dates prescribed by the milk order and enforced by the Federal Government.

The spokesman for a handler who operates a pool plant regulated under the Central Arkansas order opposed the adoption of a second partial payment to producers for milk received during the month. He presented an exhibit illustrating the extent to which the proposed payment procedure would adversely affect the cash flow of the handler. The representative testified that if handlers are required to make a second partial payment as proposed, the Central Arkansas handler would have to borrow money to make such payment. He testified further that there is virtually no money available to handlers in the State of Arkansas in the normal line of credit for use in making a second partial payment.

The representative of a handler who operates a fluid milk plant fully regulated under the Memphis order and a fluid milk plant partially regulated under the Central Arkansas order also opposed a second partial payment to producers as well as any increase in the rate of the partial payments. He noted that "even the one advance payment is unusual in the world of business". The representative supported the position taken by the spokesman for the 2 national handler associations and the representative of the handler fully regulated under the Central Arkansas order.

The Council on Wage and Price Stability filed a brief expressing its concern that the proposed payment procedure would result in increased costs to handlers that would be passed on to consumers. The Council recommended that the proposal for an additional partial payment not be adopted because the "increased costs to handlers implies an inflationary price increase". Also, it expressed concern that adoption of the proposal could aggravate the current milk surplus.

The hearing evidence does not support the adoption of the proposal for a second partial payment. There is no indication that marketing conditions in the affected areas are such that it is necessary that the orders require more frequent payments to producers each month.

While the Act authorizes the setting of payment dates under an order, it does not specify how frequently handlers must pay producers. The payment dates are customarily established under an order on the basis of prevailing marketing conditions, including payment practices already existing in an area or new payment practices that handlers and producers may find mutually agreeable. On this basis, each of the 3 orders now provides for one partial payment and one final payment by handlers to producers each month.

Under the proposal being considered, handlers would be required each month to make a second partial payment to producers. While the proposal by AMPI, the principal cooperative association in each of the 3 markets, was not opposed by any producers, none of the handlers under the 3 orders supported the proposal. All handler representatives who testified at the hearing opposed a second partial payment plan for producers. Because there are conflicting opinions between producers and handlers as to whether a different payment arrangement between these parties is desirable under the orders, more burden is placed on proponents to show that a second partial payment for milk is essential to the maintenance of orderly marketing in the 3 areas and that the orders must be changed to require an additional payment to producers by regulated handlers.

In general, the argument advanced by proponent cooperative for more frequent payments was the need to improve the cash flow of producers in the three markets. Proponent contended that producers are required to make payment for production facilities and supplies prior to using such items and should be paid more frequently so that they will be more able to meet their financial commitments on a timely basis. It is evident from the record, however, that the cash flow of members of the cooperative most likely would not be affected by changing the orders to require handlers to make more frequent payments. The spokesman for the cooperative indicated that the cooperative had no plans to change the current dates on which members of the cooperative are paid. Furthermore, it was his opinion that any change by the cooperative from its current payment dates would not be feasible since the cooperative normally uses the same payment schedule for all of its members throughout the southwestern part of the country.

The cooperative's spokesman did indicate that the cooperative has made it a practice to pay its members on the last day of the month and on the 13th of the following month for milk that the cooperative markets. It is noted that payment on the 13th of the month represents payment in advance of the time that payment is required to be made to a cooperative under any of the 3 orders. As a consequence, the cooperative at times makes payment to producers in advance of the date on which it collects payment from handlers for such milk. This is a business practice that has been in existence for some length of time and does not by itself provide sufficient reason to require that handlers make a second partial payment to producers.

In its exceptions to the recommended decision, AMPI objected to the Department's conclusion that producers should continue to receive a single partial payment and a final payment each month for milk delivered to pool plants. The cooperative reiterated the claim made at the hearing and in its posthearing brief that producers should receive two partial payments and a final payment each month in view of the nation's current interest rate structure. Exceptor pointed out that the 15-day to 45-day delay in payment to producers which handlers have enjoyed since promulgation of these orders is now too onerous a burden for producers and their cooperatives to bear. It further contended that its proposed payment plan would equalize the cash flow burden between handlers and producers which heretofore has been borne disproportionately by producers.

The views expressed by exceptor were fully considered in reaching the conclusions set forth in the recommended decision. Accordingly, no

basis exists for making changes from the recommended decision in this regard.

The proposal to increase the partial payment rate by $1.00 per hundredweight during the months of August through February should be adopted. Such increase in the partial payment rate will result in producers receiving a partial payment and a final payment that more closely approximates the value of their milk at the blend price for such month. Under the current payment method, a producer under the Central Arkansas order during 1979 received a partial payment each month on his first 15 days' deliveries that averaged 87 percent of the value of the milk at the uniform price. At the time of the final payment, the producer then received a total dollar amount equal to 113 percent of the value at the uniform price of the milk deliveries during the 2nd half of the month. If the partial payment rate adopted herein had been in effect for the months of January, February, and August–December of 1979, the partial payment received by a producer would have averaged 95 percent of the value of the milk at the uniform price for milk delivered during the first half of the month. The final payment for milk delivered during the month would have averaged 105 percent of the value of the milk at the uniform price that was delivered in the latter half of the month.

The increase in the partial payment rate adopted herein would more closely reflect the relatively high Class I utilization of milk by plants regulated under the 3 orders. The present partial payment at the previous month's Class III price reflects only the value of milk used in manufactured products such as butter, nonfat dry milk and cheese, whereas in these markets the greatest proportion of milk deliveries is ultimately disposed of as fluid milk products. For example, approximately 87 percent of the producer milk under the Central Arkansas and Fort Smith orders combined was used in Class I during 1978 and 1979.[1] Class I utilization of producer milk during the months of August through February ranged from a low of 80 percent to a high of 91 percent during 1978 and from a low of 85 percent to a high of 93 percent during 1979. Class I utilization of producer milk under the Memphis order averaged about 83 percent in 1978 and 85 percent in 1979. During August through February of 1978, producer milk in Class I ranged from a low of 81 percent to a high of 85 percent. Such utilization ranged from a low of 81 percent to a high of 88 percent during the same period of 1978. Payment at the previous month's Class III price plus $1.00 per hundredweight for milk delivered during the first 15 days of the month would result in returning to producers (including cooperative assocaitions) a price that is more commersurate with the value of such milk in its ultimate use.

At the hearing, handlers, objected to an increase in the partial payment rate because they believed that a handler operating a plant with a high Class II or Class III utilization could be assessed a partial payment in excess of the utilization value of the milk at the class prices during the first 15 days of the month. Also, in its exceptions to the recommended decision, a handler contended that such an increase could result in a handler paying in excess of the utilization value of the milk during a period when the Class III price is declining. The possibility of such overpayment is quite unlikely since propietary handlers usually operate plants with Class I utilizations in excess of the relatively high marketwide average utilizations.

A handler pointed out in its exceptions that an increase in the partial payment rate would be an additional burden on the cash flow of handlers. Although this may be so, this is not a sufficient basis for denying provisions that increase a handler's cost of doing business. For the reasons previously noted, an increase in the partial payment rate is warranted.

One exceptor, in objecting to the larger partial payment rate, pointed out that the existing partial payment rate (the Class III price for the preceding month) more nearly reflects the current utilization value of producer milk than formerly because the difference between the Class III price for the preceding month and the blend price for the current month has declined steadily over the years. While this is so, it does not negate the reasons for establishing the higher payment rate. It should be noted that this narrowing of the difference between the two prices was taken into account in determining the extent to which the partial payment should be increased.

This exceptor also suggested that an increase in the partial payment rate was not warranted since it was unlikely that any of the rate increase would be distributed promptly to proponent cooperative's members. Since cooperatives have the right to reblend proceeds, they may choose whether and when to pay any poriton of the increase to their members.

In opposing the higher partial payment rate, the exceptor also indicated that (1) the "customary" payment has been the previous month's Class III price, (2) handlers and producers have not mutually agreed upon an increase in such payment and (3) there is no evidence that present marketing conditions are disorderly. For the reasons previously noted, marketing conditions provide a basis for adopting the higher rate.

The Memphis and Fort Smith orders should provide that handlers need not make a partial payment to any producer who no longer is delivering milk to the market on the 25th of the month. Such provision is currently applicable in the Central Arkansas order. In the absence of such provision, the possibility exists that a handler might pay producers for more butterfat than was delivered. This could result if a producer ceased delivering milk to a handler after the 15th of the month and the butterfat content of the milk delivered was less than 3.5 percent. Under the provisions adopted herein, such producer would receive no partial payment if he quit delivering milk prior to the 25th of the month. If he quits delivering on or after the 25th of the month, the handler would have received in most instances a minimum of 10 days' production in addition to the 15 days' production initially received from such producer. In such circumstance, if the handler overpaid for the butterfat in the milk received during the first 15 days of production, he could recover such overpayment in making payment for that milk received after the 15th of the month.

2. *Charges on overdue accounts under the Memphis, Fort Smith and Central Arkansas orders.* Each of the three orders should provide for the application of a charge on handler obligations that are overdue. The charge would apply to handler obligations for producer milk, for administrative assessment and for marketing services. In addition, a charge would also apply under the Central Arkansas order to obligations due to the producer-settlement and administrative expense funds by the operator of a partially regulated distributing plant.

The charge on overdue accounts should be at the rate of 1 percent per month (12 percent annually). The charge should apply beginning the day following the date on which payment of an obligation is due and on the same day of each succeeding month until the obligation is paid. Any obligation that

[1] Data for the Central Arkansas and Fort Smith orders were combined to prevent the release of confidential information regarding the Fort Smith market.

was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. Also, each of the orders should provide that all late-payment charges shall accrue to the administrative expense fund. Currently, none of the three orders provide for charges on overdue accounts.

The institution of a late-payment charge under the three orders was proposed by AMPI. It proposed that any unpaid obligation of a handler that is due producers, cooperative associations and the market administrator be increased one percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such obligation is due.

The cooperative proposed that late-payment charges accrue to the fund to which payment is due except that charges resulting from the late payment of producers should accrue to those producers who are paid late. Proponent held that payment of late payment charges to the producers who are paid late is justifiable on the basis that the producers who have to wait for payment should be reimbursed for having to forego the use of such money. In the event the individual producers involved cannot be identified, the cooperative proposed that the late-payment charges for producers' receipts should accrue to the producer-settlement fund for distribution among all producers on the market.

The spokesman for AMPI contended that the institution of a charge on overdue obligations of handlers is necessary to encourage prompt payments of order obligations by regulated handlers. He pointed out that unless a charge is provided under the order, a handler who fails to pay his order obligation by the due date has a competitive advantage over those handlers who are making payments by the due date.

A representative of MIF, on behalf of the majority of handlers in the 3 markets, proposed the adoption of a two-tiered charge for accounts that are overdue. He proposed that if payment is not received by the date specified in the order but is received on or before the third day following the due date, a "late payment charge" of 0.05 percent of the unpaid balance for each day payment is not received should be assessed. If payment is not received on or before the third day following the due date, he proposed that a "delinquent payment charge" of 1.5 percent of the unpaid balance be assessed. Another 1.5 percent "delinquent payment charge" on the unpaid balance would be assessed on each 30-day anniversary of the payment due date.

The spokesman for MIF also proposed that any late-payment charges accrue to the administrative expense fund. He contended that the charges should be channeled to the administrative expense fund in order to reimburse it for the costs incurred by the market administrator in collecting the late-payments.

Proponent of a minimal daily interest rate for the first three days a payment is overdue contended that it is possible for a late payment to be made unintentionally. In his opinion, payment a few days late on an occasional basis is much different than payment several days late on a regular basis. He proposed, therefore, that a handler who makes payment during the 3 days immediately following the due date on 3 occasions during the preceding 12 months be required to make all prescribed payments to the market administrator for 3 consecutive months. In the case of a handler who fails to make payment within the 3-day period following the due date, the delinquent obligation would also become payable to the market administrator. Such handler also would be required to make payment through the market administrator for order obligations until all payment provisions of the order had been met for 3 consecutive months.

Data presented at the hearing confirm that handlers have been late in making payments for producer milk under each of the 3 orders. Also handlers have been late in making payments to the producer-settlement fund of the Central Arkansas order and to the administrative and marketing service funds of the Fort Smith and Central Arkansas orders. The data illustrated a wide range of payment practices by handlers. Some handlers were paying their obligations on time while other handlers were paying their obligations more than 15 days late.

Several handlers took the position at the hearing that not all payments listed as being paid from 1 to 5 days late should be considered as late payments. They argued that the data should have listed all payments made by mail that were postmarked on or before the due date as being made on time. Instead, in the tabulation of the data such payments were listed as being late because payment was not considered to have been made until it was received by the addressee. In that regard, payment made by a handler to a bank's postal lock box for the account of a cooperative was tabulated as being received when the bank posted such payment to the cooperative's account.

Even if one were to accept the handlers' premise that all payments postmarked on or before the due date were made on time, one would eliminate at the most only the payments listed as being overdue from 1–5 days.

However, one would presume that those payments listed as being overdue from 6–10 days, 11–15 days and more than 15 days were most likely to have been postmarked after the due date and, consequently, were overdue by the handlers' own standards for timeliness.

It is essential to the effective operation of each of the orders that all handler payments for obligations under the respective orders be made promptly. Under the payment provisions contained in the Memphis order, it is necessary that all handlers pay the total use value of milk to the market administrator on time. Through this means, money is made available to the market administrator so that he can pay producers the monies due them on the dates prescribed. The success of this arrangement depends on the solvency of the fund from which the payments are made.

Under the Central Arkansas order, it is essential that handler obligations to the producer-settlement fund be paid on time. Handlers with higher than market-average Class I utilization pay any excess of the value of their producer milk over its value at the uniform price into this fund. Payments into this fund must be made on a timely basis since the market administrator must immediately transmit such funds to handlers with a lower than market-average Class I utilization to enable them to include such payment in the uniform price they pay to producers.

Under the Central Arkansas and Ft. Smith orders, it is also necessary than handlers make partial and final payments to producers and cooperative associations on a timely basis. Producers should not be expected to wait beyond the scheduled times for their milk payments. Delayed payments not only foster uncertainty and discontent among producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

The prompt payment of accounts relating to the administrative expense funds and to the marketing service funds of the 3 orders is essential to the performance by the market administrator of the various administrative functions prescribed by

the respective orders. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are in effect borrowing money from producers. In the absence of any late-payment charge, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Without a late-payment charge handlers have little incentive to make their payments to the market administrator on time. Enforcement action may be taken, of course, to seek strict handler compliance with the payment dates. However, this is a cumbersome administrative route and the practicality of such action becomes questionable in the case of handlers who are only several days late. While the charge adopted herein may not result in strict compliance by all handlers, it should provide handlers substantial inducement to make their payments to the market administrator, producers and cooperative associations on time.

The late-payment charge should be established at the rate of 1 percent per month of the unpaid balance. If the charge is to have any impact on handlers in terms of encouraging prompt payments, it should be an amount that approaches what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. Otherwise, handlers who may have fianancial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate.

While present economic conditions might warrant the adoption of a late-payment charge greater than one percent per month for accounts that are overdue from 15 to 30 days, AMPI did not propose any higher rate. However, it should be noted that the late payment charge adopted herein would be the same whether payment is 1 day, three days or a month late. If a handler decides to delay payments for up to 3 days, the charge of 1 percent per month of the unpaid balance would be more than the handler probably would be charged by commercial banks for money borrowed for such period of time. If a handler delays more than 3 days in paying his obligation, he would then be required under the Fort Smith and Central Arkansas orders, as discussed elsewhere in this decision, to channel his payments to producers through the market administrator. Such payment requirement in conjunction with a late-payment charge should be sufficient inducement for handlers under such orders to pay by the due date.

The proposal to apply the late-payment charge on a daily rate basis for the first three days that a payment is overdue should not be adopted. If late-payment charges were treated on a money market basis, the order would represent a banking service for handlers who desire to use order obligations as a source of borrowed funds. This is not the intended purpose of the late-payment charge. Rather, it is to be a charge on overdue accounts which is sufficiently large to induce handlers to pay their obligations under the order on time.

A further reason for not adopting the proposed two-tiered charge on overdue accounts is that the payment plan under which such charges would apply would not be compatible with the use of fixed dates in the payment of producers. Under the "flexible" payment schedule proposed by a representative of MIF, a handler would have the option of paying an order obligation within 3 days after the "due" date and being assessed a nominal charge for the credit extended for such period of time. However, a lag of up to 3 days in the "due" date would require that a similar lag be incorporated in the scheduled payment dates for procedures. Producers have been accustomed to receiving payment on a fixed schedule and to the extent possible, such producers should continue to receive payment on a fixed schedule. For this reason, fixed dates should be continued for handlers to make payment of their obligations under the order so that producers may continue to receive payment on a fixed schedule.

The spokesman for MIF requested that payments be considered as having been made for purposes of meeting the payment requirement if received by an agent mutually agreeable to the handler, the cooperative or producers and the market administrator. The current provisions of the 3 orders do not preclude the use of an agent as an intermediary under the conditions proposed by the handlers' spokesman. Under the circumstances, there is no reason to modify the orders as proposed.

In conjunction with establishing a charge on overdue accounts in the 3 orders, it is essential that each of the orders make it clear when the charges would apply. In general, handlers should be permitted to pay order obligations by mail. Payments by mail that are postmarked by the U.S. Postal Service on or before the due date of the obligation should be considered as having been made on time. With regard to a mailing in which the postage date is applied by a handler's postage meter, such method of payment would not provide acceptable proof of mailing on that date since a handler would be able to predate the envelope. However, payments to the producer-settlement funds of the Central Arkansas order should actually be received by the market administrator on or before the due date specified in the order. This should be the case also for payment to the market administrator of the Memphis order that represent monies due producers for milk received by such handlers. Also, in the event that handlers under the Fort Smith and Central Arkansas order who because of late payment of order obligations are required to make payments through the market administrator for milk from producers, such payments to the market administrator must actually be received by him on or before the due date. These changes are necessary to assure that the market administrator has received payment from handlers in time for him to make the payments on the following day from the producer-settlement fund of the Central Arkansas order, to make payments to producers under the Memphis order, and, in the event of late payments by handlers under the Fort Smith and Central Arkansas orders, to make payments to the producers supplying such handlers.

In conjunction with changing the orders to require that payments by handlers to the producer-settlement fund and to the market administrator for payments of monies due producers must be received by the due date, the due date should be adjusted to minimize the impact of such changes upon handlers. In the Central Arkansas order, the due date for payments to the producer-settlement fund should be changed from the 12th to the 14th of the month. Under the new payment schedule, it is unlikely that handlers making payment by mail will need to mail the payment at any earlier date than handlers who are making timely payment under the current order provisions are required to make such payment.

As an adjunct to delaying the date by which payments must be made to the producer-settlement fund, a similar 2-day delay should be made in the date by which the market administrator must make payment from the producer-settlement fund (13th to 15th), in the date by which handlers must make final payment to a cooperative for milk of its members (13th to 15th) and in the date by which handlers must make final

payment to producers who are not members of a cooperative (15th to 17th).

It is not necessary that conforming changes be made in the dates by which handlers must make partial payments to cooperatives and producers. Such payments would be made directly by the handler to cooperatives and producers and, thus, they would not be dependent upon the handler's timely receipt of funds from the producer-settlement fund.

In the Memphis order, the due date for handlers to pay the classified use value of milk (the final monthly payment) to the market administrator should be changed from the 12th to the 14th of the month in conjunction with revising the order to require that payments must be received by the market administrator by the due date. In connection with delaying the date by which final monthly payments must be made to the market administrator, a similar 2-day delay should be provided in the date by which the market administrator must transmit such funds to cooperatives (13th to 15th). However, the date by which the market administrator must make final payment to producers who are not members of a cooperative need not be delayed for 2 days beyond the present payment date. A one-day delay (15th to 16th) should permit the market administrator sufficient time in which to make the necessary payments.

The date by which Memphis order handlers must pay the market administrator the partial payment due producers should be changed from the 25th of the month to the 2nd day prior to the last day of the month. This change is necessary because the order is being revised to require a handler to make payments to the market administrator of the partial payments due producers so that payment is received by the market administrator on or before the due date. The market administrator should be required to make payment on the following day of such partial payments to cooperatives on behalf of their members. Payments to producers for whom a cooperative is not collecting payments should be made by the market administrator on or before the last day of the month.

There is no need to make changes in the dates by which handlers under the Fort Smith order are to make payments to producers. The method of paying producers under that order involves only a single step and, thus, permits producers to be paid at an earlier date than is possible under the Memphis and Central Arkansas orders. Under the Fort Smith order, which provides for an individual handler pool, handlers pay producers directly for milk. Under the Memphis order, payments by handlers are made to the market administrator who then makes payment to producers. Under the Central Arkansas order, a marketwide pool order, a producer-settlement fund is used to return a uniform blend price to producers. Such payment procedure involves two additional steps that are not required under an individual handler pool—payments aer made to the producer-settlement fund by handlers whose Class I utilization exceeds the marketwide average and then payment is made from the fund to handlers whose Class I utilization is less then the marketwide average.

If a handler under the Fort Smith or Central Arkansas order is required to make payment for producer milk through the market administrator as the result of late payments, the respective orders should require that such payments be received by the market administrator the day prior to the date payment is otherwise due producers. This is necessary in order that payments to producers not be delayed as the result of a handler being required to channel payment for producer milk through the market administrator.

Under each of the three orders, the date by which payments need to be made to the market administrator by handlers for administrative expenses and deductions from payments to producers for marketing services performed by the market administrator should not be changed. Also, the date by which handlers must transmit marketing service deductions to a cooperative association should not be changed. Thus, handlers would need only to make payments by mail in sufficient time so that the letter containing the payment is postmarked on or before the due date.

Each of the orders should also provide that if the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business. Also, in the event the application of such provisions should result in a delay in payment to the market administrator, the corresponding payments by the market administrator to handlers, cooperative associations and producers may be delayed by the same number of days. Likewise, if payment from the producer-settlement fund by the market administrator to a handler is delayed, the handler may delay making the final payment to producers by the same number of days.

A proposal by the spokesman for MIF that the late-payment charges accrue to the administrative expense fund maintained by the market administrator should be adopted. Proponent supported this proposal on the basis that handlers who are prompt in meeting payment obligations are, in effect, being assessed for expenses incurred by the market administrator in obtaining compliance for delinquent handlers. In addition, proponent contended that in case of late payments to a producer there would be an incentive on the part of the producer to continue delivery of milk to the delinquent handlers because of a belief that he would be reimbursed for the delay in payment.

In case of delinquent handlers, money is spent by the market administrator in determining the amount of late-payment charges and in collecting such payments. The money for expenditures of this type comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

As an inducement for handlers to make payments to producers on time, it is appropriate that the charge on overdue accounts payable to producers accrue to the administrative assessment fund. If the late-payment charge were added to the amount that handlers owe producers, it would likely result in such producers being less concerned whether they are paid on time. Thus, it could be conterproductive to the purpose sought to be achieved by the late-payment charge. Moreover, if a charge of 1 percent were made with respect to a payment that was only a few days late, it would represent a higher value than the cost of money borrowed from commercial sources for the short time span. Thus, producers might prefer to be paid several days late in order to receive a late-payment charge and thus not be inclined to press handlers for timely payments. Since the late-payment charge is to be an inducement to meet the payment date, the charge should accrue to the administrative assessment fund of the market administrator who is charged with the responsibility of administering the payment transaction.

As proposed at the hearing, the Central Arkansas order should be revised to apply a late-payment charge on overdue obligations of a handler operating a partially regulated distributing plant. Under certain conditions such a handler may be required to make payments to the

producer-settlement and administrative expense funds. In the absence of any late-payment charge, a partially regulated handler could have an advantage on his order obligations relative to fully regulated handlers who are subject to the additional charge when they fail to make timely payments. Also, as pointed out earlier, prompt payments to the administrative expense fund are essential to the market administrator's performance of his duties.

A witness representing a handler regulated under the Central Arkansas order expressed the view that the late-payment charge adopted herein would violate Arkansas usury laws which establish a nine percent maximum rate of interest. In addition, another handler contended in its brief that late-payment charges, which the proponent characterized as a penalty, cannot be adopted because they are not authorized by the Act, which he claimed provides for an administrative penalty (7 U.S.C. 610(c)) at variance with the proposal.

With respect to these views, the charge on overdue accounts does not represent interest for borrowed funds. As indicated throughout the decision on this issue, the charge is applied if payments are not made on dates specified in the orders and are intended to encourage prompt and timely payments of obligations incurred under the orders. Furthermore, such a provision is authorized by section 608(c)(7)(D) of the Act which specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicity authorized by the Act. The charge on overdue accounts adopted herein is considered essential to the effectuation of the payment provisions of the orders.

One exceptor reiterated a contention made at the hearing and in a post-hearing brief that the charge on overdue accounts should be 0.05 percent per day for the first 3 days payment is overdue. Exceptor pointed out that the Great Basin order applies no charge until the 3rd day that payment is overdue.

Exceptor's proposed late-payment charge was fully considered in arriving at the Department's conclusion to impose a charge of 1 percent on the first day that payment is overdue. The date when a late-payment charge, if any, applies under an order depends upon the record evidence presented at the proceeding when the late-payment charge was considered. On the basis of the record for the current proceeding, it is concluded that only one rate of interest should apply as a charge on overdue accounts and that such charge should apply on the first day the payment is overdue.

AMPI excepted to the Department's conclusion that charges on overdue accounts with respect to payments to producers who are paid late should accrue to the administrative expense fund. The cooperative contended that producers who are paid late should receive the amount collected as a charge on overdue accounts. It pointed out that the Department's conclusion is at variance with its finding that handlers who pay late are in effect borrowing money from producers. The cooperative also excepted to the Department's conclusion that the payment of the late-payment charge to producers could be counterproductive in that producers would be less likely to press for timely payment.

The charge for late payment on a very short-term basis exceed the cost of borrowing. Thus it could be counterproductive to channel the late-payment charge to producers since they might be willing to accept payment beyond the due date if they were compensated for the delayed payment. No change should be made on the basis of the cooperative's exceptions. As previously noted, the market administrator would incur expenses in collecting late payments. For this reason, any charges on overdue accounts should accrue to the administrative expense fund to reimburse the fund for expenses incurred in the collection of overdue accounts.

3. *Maximum administrative assessment rate under the Memphis, Fort Smith and Central Arkansas orders.* The maximum assessment rate for the administration of each of the three orders should be increased from 4 cents to 6 cents per hundredweight.

As required by the Act, funds for the operation of the market administrator's office, except for marketing services, are obtained through an assessment paid by handlers. The amount of each handler's monthly assessment is dependent upon the quantity of milk that he receives and the assessment rate effective for such month. The assessment rate, within the maximum amount specified in the order, is determined by the market administrator, subject to the approval of the Secretary, according to his projections of the level of monthly producer receipts and the costs of operating his office. The actual assessment rate since 1975 in each of the three orders has been 4 cents per hundredweight, the maximum allowable under the orders.

It was proposed by the principal cooperative association representing producers supplying the three markets that the maximum rate of administrative assessment be increased 2 cents per hundredweight in each of the orders. A Central Arkansas handler supported the proposed 2-cent increase.

The assistant market administrator of the three orders testified about the current assessment rate. He stated that in view of increasing office expenses, which he estimated would approximate 12 percent per year for 1980 and 1981 as a consequence of inflationary pressures, and a relatively constant level of producer receipts on which income for administration of the order is dependent, the present 4-cent limit would not provide sufficient funds during the next several years to administer the three orders effectively. The assistant market administrator pointed out that the present maximum rate has been in effect since the orders were promulgated (Memphis 1951; Fort Smith 1952; and Central Arkansas 1955).

Generally, market administrators are expected to maintain a reserve fund that would cover their operating expenses for up to six months. The monies in the reserve fund normally would be needed to carry out the market administrator's responsibilities in the event an order is withdrawn for any reason. If the reserve fund exceeds projected operation expenses for a greater length of time, then the administrative assessment is usually suspended or the rate lowered until the reserve fund has been reduced.

As noted by the assistant market administrator, a reserve operating fund approximating 70–80 percent of the yearly administrative expenses is needed to assure that sufficient funds are available to continue the needed administrative work in the event an order is withdrawn for any reason. Such level of reserve funds is not attainable under the current maximum provided under the three orders. Continuation of the current level of funding would result in the operating balance declining to 63 percent and 44 percent of the yearly operating expenses by the end of 1980 and 1981, respectively.

To assure that the market administrator will have sufficient funds to enable him to administer the three orders and maintain the necessary reserves, the maximum assessment rate should be increased to 6 cents. If experience indicates that at a later date a lower rate will be sufficient to provide adequate funds for the administration of these orders, provision is made so that the Secretary may reduce the rate

without the necessity of amending the order.

4. *Maximum marketing service deductions under the Fort Smith and Central Arkansas orders.* The Fort Smith and Central Arkansas orders should provide for a maximum deduction from payments to producers of 7 cents per hundredweight for marketing services furnished by the market administrator.

Deductions for marketing services are used by the market administrator to conduct a marketing service program for producers supplying the market who do not have such services provided by a qualified cooperative association. Such services include the verification of weights and butterfat tests of milk and providing market information. The maximum rate for such services in the Fort Smith and Central Arkansas markets is now 5 cents per hundredweight.

AMPI proposed and testified in support of increasing the maximum deductions for marketing services in the Fort Smith and Central Arkansas orders from 5 cents to 7 cents per hundredweight. The spokesman for the cooperative held that the increase was needed due to "inflation".

For the years 1975–1979 the expenses of providing marketing services by the market administrator for the Central Arkansas order, the only one of the 3 orders where producers receive marketing services provided by the market administrator, averaged $13,100 per year. The yearly marketing service expenses for 1980 and 1981 were estimated to be $13,650 and $15,350, respectively. By the end of December 1981, it was projected that the operating balance on hand would have declined to $6,450, or 42 percent of the operating expenses for the year.

The assistant market administrator testified regarding the proposed increase. He indicated that much of the work in the marketing service program involves travel. It was his opinion that in view of the increased costs to perform travel a 7-cent per hundredweight rate was warranted.

The 7-cent rate which was proposed should permit the market administrator to conduct an adequate marketing service program for those producers not receiving such services from a cooperative association. It is also noted that the Memphis order, which is administered by the same individual who administers the Fort Smith and Central Arkansas orders, currently provides for 7 cents per hundredweight as the maximum charge for marketing services. If experience indicates that the services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

5. *Payment of producers and cooperative associations through the market administrator under the Fort Smith and Central Arkansas orders.* The Fort Smith and Central Arkansas orders should be amended to provide that any handler who is more than 3 days late in the payment of any obligation under the order shall pay all order obligations for producer milk to the market administrator who, in turn, would distribute such money (in terms of the uniform price(s)) to producers and cooperative associations. Such handler would be required to make payments to producers through the market administrator for a period of 3 consecutive months before he would be permitted to again pay producers directly. Handlers who pay order obligations by the due date or within 3 days after the due date could continue to make payment to producers and cooperative associations directly. Those handlers who have not paid their order obligations by the due date would be assessed a late-payment charge as discussed herein under the issue of charges on overdue accounts.

Under the Fort Smith order, which provides for an individual-handler pool, the handler currently pays the uniform price(s) directly to the producers who supply him with milk.

The Central Arkansas order, which provides for a marketwide pool, also provides for the direct payment of producers by the handlers who receive their milk. Under this arrangement, part of the money due producers from handlers with higher than market-average Class I utilization is used in paying producers supplying handlers with less than market-average Class I utilization. This exchange of money is accomplished through a "producer-settlement fund" maintained by the market administrator. Handlers with higher than market-average Class I utilization pay any excess of the value of their producer milk over its value at the uniform price into this fund. Other handlers receive from the fund payments that are included in the uniform price they pay to their producers.

AMPI proposed that the market administrator collect from handlers regulated under the Central Arkansas and Fort Smith orders all order payments due producers as he now does under the Memphis order. However, handlers under the 3 orders could elect to pay the producers supplying them with milk. As proposed by the cooperative, any handler who was not delinquent with respect to any of his payment obligations and who wished to pay his own producers would pay his full obligation to the market administrator. Upon receipt of the proper payment, the market administrator then would transfer sufficient money to the handler so that he could pay his producers. Alternatively, the handler could make payment to individual producers prior to the time such amounts are payable to the market administrator. In such instance, the handler would then offset such amounts paid to individual producers against any obligation due the market administrator for such producer milk.

The cooperative proposed that payment not be made to any handler by the market administrator if he determines that the handler is or was delinquent with respect to any payment obligation under the order regulating such handler. Once a handler is delinquent in the payment of his order obligations, payment would not be made by the market administrator to the handler for payment to any producer until the handler had met all prescribed payment obligations for 3 consecutive months. In this regard, the cooperative proposed that the market administrator consider not only payments from the handler to the market administrator but whether payments by the handler to the individual producers had been made by the specified due dates.

The cooperative requested that a producer-settlement fund be provided in each of the three orders as a mechanism to receive the money due producers from handlers. The only purpose of the fund in the Memphis and Fort Smith orders would be to serve as a conduit to move money from handlers to the market administrator who would then transmit such funds to producers and cooperative associations.

The cooperative proposed that the market administrator make payment to a cooperative association that so requests with respect to those producers for whom it markets milk. It also proposed that the market administrator make payment to those producers for whom the cooperative association in not collecting payments unless the handler receiving the producers' milk requests that such payments be made to him for subsequent payment to producers.

Proponent urged the adoption of its proposed payment arrangements on the basis that it would provide handlers with a stronger incentive for making prompt payment of their order obligations. The cooperative claimed that since handlers tend to pay the

market administrator on a timely basis all producer payments should be channeled through him rather than having handlers pay producers directly. Also, proponent contented that late payments by certain handlers result in an inequitable situation for those handlers making timely payments. This is because the delinquent payers are using money due producers to overcome cash flow problems while the prompt payers must borrow money or use their own capital.

A representative of a handler who operates a pool plant under the Memphis order and a patially regulated distributing plan under the Central Arkansas order opposed the channeling of payments through the market administrator. The representative objected to "strait-jacketing the entire industry" in an effort to stop the occasional late payment by a handler. In his opinion, an interest penalty proposed for adoption in the 3 orders by the representative of MIF would provide sufficient incentive for handlers to make timely payments.

A reprersentative of a handler that operates a distributing plant regulated under the Memphis order, which provides for the market administrator to make payments to producers and cooperatives, opposed the adoption of such payment requirements under the Central Arkansas order. In his opinion, the evidence presented by proponents did not establish conclusively that handlers were "delinquent" in the payment of obligations to the market administrator, producers and cooperative associations.

The spokesman for MIF proposed on behalf of the majority of the handlers in the 3 markets that handlers be required to make payment of order obligations through the market administrator only under certain conditions. As an adjunct to a two-tiered charge on overdue accounts previously discussed herein, he proposed that if a handler is up to 3 days late on 3 occasions during the preceding 12 months in paying his order payments to the market administrator for 3 consecutive months. A handler who makes payment more than 3 days late would also be required to make all prescribed payments to the market administrator for 3 consecutive months.

If the Fort Smith and Central Arkansas orders are to serve the intended purpose of promoting orderly marketing in the respective marketing areas, it is essential that handlers under such orders pay their obligations on a timely basis. Currently, handlers have the use of producer milk for considerable periods of time before any payments for such milk are due. Producers should not be expected to wait beyond the scheduled times for their milk payments. Delayed payments not only foster uncertainty and discontent amont producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

From the standpoint of handlers, also, it is necessary that all order obligations be paid on a timely basis. Otherwise, handlers who are in compliance would be at a competitive disadvantage with delinquent handlers who are using monies due producers as a source of funds for operating purposes.

For these reasons, the Fort Smith and Central Arkansas orders should be structured to encourage prompt payment by handlers of order obligations. While the institution of late-payment charges under the orders should provide a strong incentive for handlers to pay their order obligations when due.

Some further incentive should be provided. In this regard it is noted that the principle cooperative association currently imposes a late-payment charge upon accounts due the cooperative. However, the incidence of late payments to the cooperative has continued. On the basis of that experience, it is concluded that the orders should provide an additional payment requirement for a handler who might otherwise decided to use money due producers as a source of funds and thus intentionally pay his order obligations late.

The additional payment requirement adopted herein is an alternative that was proposed by MIF's representative. The representative proposed that any handler who is more than 3-days late in the payment of any order obligation should not be permitted to pay producers and cooperative associations directly for 3 consecutive months. During such 3 months the handler would be required to channel such payments through the market administrator. Except for a 3-day delay before this payment requirement is invoked, the proposal on behalf of handlers is essentially the same as the payment arrangement proposed by proponent cooperative.

Producers and handlers in the two markets are in general agreement that both a charge on overdue accounts and the payment of order obligations to the market administrator are effective tools for obtaining compliance with order provisions. The two groups differ basically as to when each of these payment provisions should apply. MIF's proposal that handlers be given a 3-day grace period before being required to make payments to producers through the market administrator should provide an effective enforcement tool when used in conjunction with a charge on overdue accounts that applies the day after an obligation is due. By structuring an order in this fashion, handlers have 2 incentives for making timely payments. Thus, if a handler pays his obligation by the due date, he avoids a charge on overdue accounts. If he pays his obligation within 3 days of the due date, he may continue to pay producers and cooperative associations directly.

Also, the payment adopted herein tends to be self-policing. A handler would not be permitted to make payment directly to producers and cooperative associations if he fails to pay any order obligations within 3 days of the due date. Under this procedure, a producer or cooperative association would be aware that a handler has failed to pay an order obligation and thus may represent a financial risk with respect to future deliveries of milk to the handler.

Presently, under the Central Arkansas order a handler may pay his producers the blend price and at the time fail to pay an amount due the producer-settlement fund. In the absence of any knowledge of the handler's financial difficulties, producers presumbly would continue to ship milk to the handler. Only when the handler's financial problems become so great as to result in nonpayment to his producers would the producers realize the possible need for seeking a different outlet for their milk. Under the adopted payment procedure, producers under the Central Arkansas order would be aware of the handler's financial difficulty in the first month following nonpayment. They then would be able to consider on a more timely basis the possible need for making other arrangements for the sale of their milk before their loss as a result of nonpayment mounts to the point that they would be placed in a severe economic bind.

Under the adopted payment procedure, it is imperative that the payments received by the market administrator from handlers represent sound money. This is necessary, of course, under the present payment arranement. However, with the payment schedule adopted herein, the market administrator will need to make payments from the producer-settlement fund of the Central Arkansas order to certain handles the day after the payments are due the fund. Such payments will have to be made with the belief that the checks received from handlers and deposited in the producer-settlement fund are, in fact, good. Time

will not permit the clearance of such checks through the banks prior to the withdrawal of money from the producer-settlement fund.

Also, in the event payments by handlers regulated under the Central Arkansas and Fort Smith orders are more than 3 days late, such handlers would be required to channel their payment for producer milk through the market administrator. Under such procedure substantially greater amounts of money would be transferred in and out of accounts maintained by the market administrator and, as a consequence, the receipt of a bad check of a subtantial sum could render such an account insolvent.

The attached order does not prescribe the specific means by which handlers shall make payment to the market administrator. The need for such specificity should be based on actual experience in the market. As long as handlers make full payment by the prescribed payment dates and their checks are good, there is no problem. However, if the market administrator, because of prior experience or for other reasons, does not have reasonable assurance that payments tendered would represent sound money, it is necessary that he have the administrative discretion to prescribe the means of acceptable payment.

Under the terms of the order, the market administrator has the authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be an urgent need for greater specificity with respect to the procedures for making payments, this may be accommodated through the promulgation of appropriate administrative rules with the approval of the Director of the Dairy Division and in consultation with the local industry.

6. *Payments for milk from cooperative association plants under the Memphis and Central Arkansas orders.* The Memphis and Central Arkansas orders should be revised to specify that pool plant operators under the respective orders who receive bulk milk during the month from a pool plant operated by a cooperative association shall make a partial and final payment to the cooperative for such purchases. Handlers should be required to make the partial and final payments by the same dates as specified for handlers receiving milk directly from producers or a cooperative acting as a bulk tank handler. The partial payment by the handler for the months of March–July, which would apply to milk received during the first 15 days of the month, should be at the Class III price for the preceding month.

The partial payment by the handler for the months of August–February should be at the Class III price of the preceding month plus $1.00 per hundredweight, and should be further adjusted by the location adjustment applicable at the receiving plant. The buying handler should be permitted to adjust the partial payment rate in any month to reflect the butterfat content of the milk purchased. The final payment should be based on the classified use value of all bulk fluid milk products received during the month from the cooperative's plant, less the amount of the partial payment.

Payment by the handler under each order should be made in the same manner as for milk that is received directly from the farm. Under the Memphis order, payments by the handler should be made to the market administrator who would then transmit such payments to the cooperative association. Under the Central Arkansas order, payments by the handler should be made directly to the cooperative association unless the market administrator determines the handler was more than 3 days late in making any payment obligation under the order. In that event, as previously discussed in this decision under the issue dealing with the payment of producers and cooperative associations through the market administrator, the handler would be required to make payment of such obligation to the market administrator for 3 consecutive months before the handler would again be permitted to pay the cooperative directly.

The principal cooperative association supplying the Memphis and Central Arkansas markets proposed that pool plant operators under each order who received bulk milk during the month from a pool plant operated by a cooperative association should be required to make 2 partial payments and a final payment to the market administrator for such milk. The 1st and 2nd partial payments, which would apply to receipts during the first 15 days and the remaining days of the month, respectively, would be at the class prices under the respective orders adjusted by the applicable butterfat differential.

The classification to be accorded such receipts would be based upon the classification accorded such receipts under the transfer provisions of the respective orders. If any of the milk transferred during the 1st 15 days of the month is classified as Class II or Class III milk, the latest available class prices would be used to value such milk. Such pricing procedure would be necessary because the partial payment for milk received during the 15 days of the month is due at the close of such month while the class prices for milk in surplus uses during such month are not available until the following month. The final payment would be based on the classified use value of all fluid milk products received during the month from the cooperative's plants less the value of the 2 partial payments made for such receipts. The market administrator, upon receipt of the partial and final payments, would transmit such payments to the cooperative.

While there was no direct opposition to structuring the Memphis and Central Arkansas orders to provide for specific payment provisions for such bulk milk purchases, there was opposition to the requirements that payments for such milk be channeled through the market administrator and that settlement for such purchases be made through 2 partial payments and a final payment. In this regard, a representative of a majority of the handlers opposed the adoption of any provision that would require a handler who is making timely payments to channel payments for producer milk through the market administrator on a regular basis. As previously noted, the representative proposed instead that such payment procedure be applied if a handler is more than 3 days late in making payments or if a handler is from 1 to 3 days late in making payment three times during a 12-month period. The representative proposed that the proposed payment procedure be used in conjunction with a two-tiered interest charge for late payments (the details of such interest charge are set forth in this decision under the issue dealing with late-payment charges).

Currently, milk marketed under the Central Arkansas order by the proponent cooperative is moved to distributing plants directly from the farm. Prior to February 1980, some milk under the order was moved to pool distributing plants, either on a regular basis or a supplemental supply basis, from the cooperative's supply plant at Pittsburgh, Kansas. Under the Memphis order, some milk is moved to distributing plants, either on a regular basis or a supplemental supply basis, from the cooperative's supply plant in Martin, Tennessee. The primary milk supply for the Memphis market, however, is moved to distributing plants directly from the farm.

Irrespective of the supply arrangements used, the producers involved are supplying milk for fluid markets and should be assured of receiving payment for their milk. Such

assurance is essential to the orderly marketing of milk and the maintenance of an adequate supply of milk for consumers. The incorporation within the respective orders of specific payment requirements by handlers for bulk milk received from a cooperative association will enhance the ability of the cooperative association to collect for such receipts. By providing specific payment requirements under each order, late-payment charges would be applied by the market administrator on any payment that is not made on or before the due date. Furthermore, as discussed elsewhere in this decision, any handler who is more than 3 days late in making any payment obligation under the order would be required to channel his payment for milk received directly from the farm through the market administrator. Such arrangement likewise should apply if a handler is more than 3 days late in paying for bulk milk received from a pool plant operated by a cooperative.

There is no reason why milk that is received at a cooperative's plant and then shipped to a pool plant should be treated differently for payment purposes than milk shipped directly from a member's farm to a pool plant. Accordingly, handlers receiving bulk fluid milk products from the plant of a cooperative association should be required under the Memphis and Central Arkansas orders to make a partial and a final payment to the market administrator and the cooperative association, respectively, by the same dates as specified for handlers receiving milk directly from producers or a cooperative acting as a bulk bank handler.

The partial payment which would apply to receipts during the first 15 days should be at the same rates that apply on receipts of milk directly from the farm of a member producer of a cooperative association. The partial payment for the months of March–July should be at the Class III price for the preceding month.

For the months of August–February, the partial payment should be at the Class III price for the preceding month plus $1.00 per hundredweight, and should be further adjusted by the location adjustment applicable at the receiving plant.

The orders should provide that the buying handler may adjust the partial payment rate during any month to reflect the butterfat content of the milk purchased if he desires to do so. This option will benefit handlers who receive skim milk from a cooperative's pool plant. In such situations, unless the partial payment rate is adjusted downward from the price level for milk containing 3.5 percent butterfat, the handler would be paying in excess of the classified use value of such milk. At the time of the final payment, the handler then would be due a credit from the cooperative. This unnecessary additional transaction can be avoided by allowing a handler to adjust his partial payment to refect the butterfat content of milk purchased from a cooperative's plant.

The final payment should be based on the classified use value of all fluid milk products received during the month from the cooperative's plant less the value of the partial payment made for such receipts. Upon receipt of the partial and final payments, the market administrator of the Memphis order would then transfer such funds to the cooperative. Under the Central Arkansas order, the handler would make such payment directly to the cooperative as long as he is not more than 3 days late in the payment of any order obligations.

With regard to the Class I price to be used in computing a handler's payment for plant milk received from a cooperative, AMPI proposed that such price should be the higher of the Class I prices applicable at the plant of the handler or the cooperative, plus the administrative assessment. Under such proposal, the Class I price applicable at the location of the transferee-plant would apply if milk were transferred from a lower-price zone to a higher-price zone. Conversely, the Class I price applicable at the location of the transferor-plant would apply if milk were transferred from a higher-price zone to a lower-price zone. Proponent contended that payment at the higher price is necessary to be consistent with the Act which states in part that a cooperative that is reblending the proceeds from the sale of its members' milk may not sell milk to any handler in any market at less than the class prices applicable under the order.

The proposal to require payment at the higher of the prices applicable at the transferee-plant or the transferor-plant should not be adopted. Rather, payment by handlers for milk transferred from a cooperative's plant should reflect the Class I price applicable at the location of the transferee-plant regardless of whether the milk is shipped to a higher-price zone or lower-price zone.

Under normal circumstances, transfers of Class I milk from a cooperative's plant to a distributing plant would be from a lower-price zone to a higher-price zone. In such case, the distributing plant operator should be required under the Central Arkansas order to pay the cooperative directly, and under the Memphis order to pay the cooperative through the market administrator, for such milk at the Class I price applicable at the distributing plant. This price would generally reflect the order value of milk at the cooperative's plant plus the cost of transporting it to the distributing plant. This is the same price that would apply to Class I milk received at at distributing plant directly from the farms of producers or from a cooperative acting as a bulk tank handler.

Although it is unlikely in these markets under present conditions, Class I milk could be transferred from a cooperative's pool plant located in a higher-price zone to a pool distributing plant in a lower-price zone. For this type of milk movement, the cooperative in its capacity as a pool plant operator receiving milk at its plant, should be required to account to the pool at the Class I price applicable at its plant. However, it would be inappropriate for the order to enforce such price in the final settlement for such milk between the distributing plant operator and the cooperative association. This would result in the distributing plant operator having to pay a high Class I price for milk received from producers via a cooperative's plant than for milk received from producers either directly or through a cooperative acting as a bulk tank handler. Also, his order Class I price on such transfers would be higher than the order Class I price applicable to milk from producers by other regulated handlers in the same location. This would not result in uniform calss prices to handlers. Requiring payment to the cooperative at the Class I price applicable at the location of the transferee-plant satisfies the requirement that a cooperative association may not sell milk at less than class prices.

It is recognized that requiring the cooperative association to account to the pool at the higher Class I price applicable at its plant in this case probably would make the transfer uneconomic to the cooperative. The cooperative would have to decide, of course, if it should undertake this kind of milk handling arrangement.

8. *Pool supply plant qualifications under the Central Arkansas order.* No changes should be made on the basis of this record in the percentage of milk receipts that a supply plant must ship to pool distributing plants to attain pool plant status. However, the provisions should be modified to permit the Director of the Dairy Division (Agricultural Marketing Service, U.S.

Department of Agriculture) to temporarily increase or decrease the supply plant shipping percentage by up to 10 percentage points if it is determined that additional shipments are needed or that excessive shipments are likely to be made. Also, the month of September should be added to the current qualifying months during which supply plants must make shipments to pool distributing plants to attain pool plant status during other months of the year without regard to shipments. As a result of such change, a supply plant that is pooled during each of the months of September through January could be designated as a pool supply plant for the following months of February through August regardless of its shipments to distributing plants during such months.

The order currently provides pool status to a supply plant that ships to pool distributing plants not less than 50 percent of its monthly receipts of producer milk and milk received from cooperative associations in their capacity as bulk tank handlers. A plant that is pooled as a supply plant during each of the months of October through January is designated as a pool plant for the following months of February through September if written application is made to the market administrator. The order also provides pool status to a plant operated by a cooperative if member producers deliver 50 percent or more of their milk to pool plants of other handlers and the cooperative's plant ships 25 percent or more of its receipts during the month to distributing plants. A plant that is pooled as a supply plant during each of the months of October through January is designated as a pool plant for the following months of February through September if written application is made to the market administrator.

AMPI proposed that the performance standards for pool supply plants operated by a cooperative or proprietary handler be increased and applied during each month of the year. Under the proposal a supply plant would have to ship not less than two-thirds of its receipts of Grade A milk from dairy farmers (including producer milk diverted from the plant) and cooperative associations in their capacity as bulk tank handlers to distributing plants pooled under the Central Arkansas and other Federal orders. Of the plant's receipts, at least 50 percent would have to be shipped to distributing plants pooled under the Central Arkansas order.

AMPI proposed a tightening of the performance standards on the basis of the relatively tight supply situation in relation to demand that is characteristic of the market. A spokesman for AMPI testified that virtually all milk pooled on the market is delivered to distributing plants for primarily Class I and Class II uses. Market data contained in the record, and relied upon by AMPI, establish that the yearly Class I utilization of producer milk for the Central Arkansas and Fort Smith markets combined was about 87 percent for 1978 and 1979.[2] The combined Class I and Class II utilization of producer milk for the period exceeded 92 percent. Additional data presented by AMPI show that of the total milk pooled under the Central Arkansas order by AMPI for the years 1978 and 1979, about 94 percent was delivered to distributing plants.

AMPI further testified that there is very little variation in the monthly percentage of pooled milk utilized by distributing plants. Consequently, AMPI concluded that because of the yearly tight supply-demand relationship that exists, the performance standards for supply plants should be increased and such standards should be applied throughout the year to assure that distributing plants are adequately supplied with milk. AMPI contended that it is reasonable to require that at least two-thirds of a supply plant's receipts be shipped to distributing plants to demonstrate an adequate performance in supplying this market's fluid milk needs. Also, AMPI contended that such level of performance by supply plants is also reasonable in view of AMPI's performance in supplying the market.

AMPI also testified that it may be necessary for supply plants pooled under this order to ship milk to distributing plants regulated under other orders. For this reason, the cooperative proposed that recognition be given to meeting the 66⅔ percent shipping standard by shipments to other order distributing plants, provided that at least 50 percent of a supply plant's receipts are shipped to plants regulated under this order.

Kraft opposed the proposed higher shipping standards and supported a 50 percent shipping standard during the months of September through January with automatic pooling during the remaining months of relatively greater milk production. Kraft proposed that if there is reason to believe that in a future month higher pooling standards for a supply plant might be necessary, the order should be amended to allow the Director of the Dairy Division to deal with such a situation on a temporary basis. Kraft also suggested that a portion of the supply plant shipping standards be met by the direct shipment of milk from dairy farmers' farms to distributing plants.

Kraft opposed any increase in shipping standards for supply plants on the basis that there is no indication that distributing plants are having difficulties in obtaining a supply of milk sufficient to meet their fluid milk requirements, despite the high Class I utilization that is characteristic of the market. Kraft contended that the market's relatively high Class I use results from marketing practices of AMPI. In its capacity as the principal supplier of milk to the market, Kraft noted that AMPI pools the reserve milk requirements of Central Arkansas distributing plants under other Federal orders to maintain a high Class I utilization in the Central Arkansas market. This is accomplished by associating additional producers with the Central Arkansas market when additional supplies are needed at fluid outlets and disassociating producers from the market and pooling such milk under other Federal orders when it is not needed by plants regulated under the Central Arkansas order.

Kraft testified that the shifting of producers among markets is a marketing practice that is not available to a proprietary handler, such as Kraft. If Kraft operated a supply plant under the order, the company would have to carry the reserve supplies of its distributing plant customers within the market. Thus, Kraft concluded that the current marketing situation that results from marketing practices that are not available to Kraft or other proprietary handlers does not provide a proper basis for increasing the performance standards for supply plants.

Kraft also opposed the performance standard proposed by AMPI on the grounds that such level of performance could result in requiring supply plants to have a greater association with the market through supplying the fluid milk needs of distributors than is required of distributing plants with high Class II and Class III uses. In addition, Kraft testified that a higher performance level could inhibit the possible entry of new dairy farmer suppliers to the market. In support of that position, Kraft contended that as dairy farmers who furnish the current manufacturing grade milk supply

[2] Data for the Central Arkansas and Fort Smith orders are combined to prevent the release of confidential information. The combined data, however, should be reasonably representative of the data for the Central Arkansas market since the Fort Smith portion of the combined data on producer receipts represents less than 10 percent of the total receipts of producer milk for the two markets.

at its manufacturing plant in Bentonville, Arkansas, convert to the production of Grade A milk, such milk will be available as a potential reserve supply for the Central Arkansas and other Federal order markets. However, Kraft contended that an increase in the performance standards, as proposed by AMPI, would preclude this new production as a supply for the Central Arkansas market as long as the dairy farmers continue to supply Kraft.

Although Kraft held that the current 50 percent shipping standard during fall months for supply plants represents an adequate association with the market, it suggested that the Director of the Dairy Division be given the authority to adjust the supply plant performance standard in the event that at some future time an adjustment was needed. Although Kraft presented no specific recommendations regarding the adjustment, it noted that the use of such provision would provide greater flexibility in dealing in a timely manner with any potential changes in supply-demand relationships that could not be predicted at the time of the hearing.

Kraft also suggested that a portion of the supply plant performance standards be met by direct shipments of milk from dairy farms to distributing plants. It claimed that this modification to current provisions would provide the opportunity for increased efficiency and energy conservation in situations where milk supplies are located between a supply plant and the distributing plants. Kraft noted that under current provisions such milk must be picked up at the producers' farms, hauled from the farm to the supply plant (located in the opposite direction of the distributing plant), received at the supply plant, and reloaded for transportation to the distributing plant. In addition to eliminating some of the hauling, Kraft indicated that direct shipments from the farm to distributing plants would eliminate the need to unload and reload milk at the supply plant for the purpose of associating such milk with the market. Kraft was not specific as to the extent to which such direct farm to plant shipments should be recognized in meeting the performance standards.

Kraft also opposed the application of performance standards on a year-round basis. It proposed that automatic pool supply plant status during the spring and summer months of relatively heavier milk production be provided for plants that had supplied the market during the fall and winter months of relatively lower milk production. Kraft held that AMPI's proposed monthly shipping requirements represented a substantial deviation in current order provisions and were contrary to the position taken by AMPI at a prior hearing held to consider the merger of the Central Arkansas order with the Memphis and Fort Smith orders. Kraft quoted testimony from such prior hearing concerning the need to recognize seasonality of milk production in establishing pool supply plant standards to prevent the uneconomic movement of milk to distributing plants solely for pooling purposes. In that regard, Kraft contended that because milk production is relatively greater during the period of February through August, supply plants should not be required to make shipments to distributing plants during such months because of the possibility that the milk could not be utilized by the distributing plant.

The purpose of pooling standards for supply plants is to distinguish between those plants substantially engaged in serving the fluid milk needs of the regulated market and those plants that do not serve the market to a degree that warrants their sharing, through pooling, in the market's Class I returns. The standards also must assure that supply plants associated with the market will ship milk to distributing plants at the times and in the quantities needed to meet fluid use requirements. However, supply plant standards should not be so high as to encourage the shipment of substantial quantities of milk in excess of fluid milk needs and should not apply during those months of the year when shipments are not necessary to meet fluid milk requirements.

As previously noted, the order now permits a supply plant that has met the minimum shipping requirements during the months of October through January to qualify as a pool plant during the following months of February–September without having to meet any specified shipments to distributing plants. The automatic pooling feature recognizes that the demand for supply plant milk is usually less during months of relatively high production than in other months. Requiring no shipments during such months for plants with an established association with the market avoids unnecessary, as well as uneconomical, shipments to distributing plants for the sole purpose of maintaining pool plant status. Also, the automatic pooling feature permits those producers who have established their association with the fluid market through deliveries to a pool supply plant to share in the market's Class I sales when supply plant milk may not be needed by distributing plants.

At the time of the hearing, there were no supply plants serving the market. A plant operated by AMPI at Pittsburg, Kansas was pooled as a supply plant under the order from September 1978 through January 1980 but has since ceased operations. A plant operated by Kraft at Bentonville, Arkansas is pooled under the Oklahoma Metropolitan order and was indicated by Kraft to represent a potential source of supply to the Central Arkansas market. At the time of the hearing, however, no milk had been shipped from the plant to Central Arkansas distributing plants. Consequently, with no supply plants serving the market, a revision of the supply plant performance standards would have no immediate impact on any handler and also would not be instrumental in making additional supplies of milk available to distributing plants.

Although there are no supply plants serving the market, AMPI is apparently concerned that in the future supply plants could become associated with the market by shipping to distributing plants a much lesser proportion of their receipts than the proportion of AMPI's producer milk that is shipped to distributing plants. AMPI contends that to the extent that supply plants would begin serving the market at the minimum performance standards currently provided in the order, and all other things remained unchanged, the Class I utilization of producer milk and blend prices to producers would decline. Also, AMPI is apparently concerned that the relatively high Class I utilization of producer milk that is maintained in this market throughout the year will provide supply plant operators with the incentive to establish a pooling base primarily as a means to secure a supply of pooled milk for other than fluid milk use.

AMPI, as the principal market supplier, has been able to efficiently tailor the receipts of producer milk to the needs of distributing plants as evidenced by the high proportion of AMPI producer milk that is shipped to distributing plants and the relatively high Class I use that is maintained in the market. However, it must be recognized that the decision to pool this market's reserve milk supplies on other Federal order markets is a business decision made by AMPI. The fact that AMPI may be concerned that the relatively tight supply and demand situation in this market, which to a large extent is a reflection of AMPI's method of operation, may encourage the pooling of supply plants on the market in the future does not provide a proper basis for

providing increased performance standards on a year-round basis. The adoption of higher performance standards and the application of such standards throughout the year should be based on an indication that distributing plants are having difficulty in obtaining adequate milk supplies for fluid use from supply plants. There was no demonstration on this record that any distributing plant is having difficulty in obtaining an adequate supply of milk for fluid needs.

Furthermore, there is no indication on the record of this proceeding to indicate that the current standards for pooling supply plants do not provide a reasonable distinction between those plants that are substantially engaged in serving the fluid needs of the regulated market and those plants that do not serve the market to a degree that warrants their sharing the market's Class I returns. Therefore, no major changes should be made in the current supply plant pooling standards and the proposal to increase such standards on a year-round basis is denied.

Several minor changes, however, should be made in the current pool supply plant provisions. September should be specified as a month during which supply plants must make shipment to distributing plants to obtain pool plant status. Consequently, a supply plant would have to meet the pooling standards during each of the months of September through January in order to be eligible for automatic pool plant status during each of the months of February through August. Currently, supply plants are not required to make shipments during September and are eligible for automatic pooling during such month if qualified on the basis of shipments during each of the months of October through January.

Pool supply plants should be required to make qualifying shipments during the month of September because it is a month in which the fluid milk requirements of handlers are greater than average. Market statistics reveal that for the Central Arkansas and Fort Smith markets combined average daily Class I sales by all pool plants during September of 1978 and 1979 were greater than the average daily sales for each of these years. Also, the Class I utilization of producer milk in September was greater than yearly Class I use during 1978 and 1979, indicating a somewhat tighter than average supply-demand relationship. Because the month of September is one of the months in which production is short relative to Class I sales, it should be included in that time period when qualifying shipments are required since shipments from supply plants, when such plants are associated with the market, would most likely be necessary to meet fluid demands during such month. Such change would provide greater assurance of the availability of pool supply plant milk to meet the fluid milk needs of distributing plants. Furthermore, the application of performance standards during the months of September–January would provide greater uniformity with other provisions that are also based, in part, on a distinction between the relatively short and heavy production seasons. For example, the diversion provisions (discussed under issue number 9) adopted herein provide more stringent limits on the quantity of milk that may be diverted to nonpool plants during the months of September through January than during other months. Also, the September through January period is regarded in the base-excess payment plan as the period when milk production is shortest relative to the Class I needs of handlers as new bases are established for each producer on deliveries made during such months.

An additional modification should be made in the performance standards to provide for a temporary upward or downward adjustment of the shipping percentages for supply plants if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or that fewer shipments to such plants are needed. The adjustment should be limited to not more than 10 percentage points.

Under this provision the Director would investigate the need for revision, either on his own initiative or at the request of interested persons. If the investigation showed that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping requirements is being considered and inviting views of interested persons concerning the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision is warranted.

As indicated previously, there were no supply plants serving the market at the time of the hearing. Also, there is no compelling reason to increase the performance standards on a permanent basis. However, market statistics establish that this is a relatively high Class I use market with producer receipts tailored almost precisely to the needs of distributing plants. In the event that supply plants become associated with the market in the future, any short term changes in supply or demand could result in the need to adjust the performance standards on short notice. Under current provisions, changes in performance standards for supply plants can be accomplished only through a time-consuming proceeding or by suspension. Furthermore, changes accomplished through suspension are limited because of procedural requirements to relaxing rather than increasing the shipping standards. Inclusion of a provision to adjust temporarily supply plant shipping standards will enhance the ability of the order to deal in a timely manner with short-run changes in supply/demand conditions that cannot now be predicted. However, any such temporary revision of shipping standards is intended only to meet an emergency situation in meeting Class I needs of distributing plants and, therefore, should be of short duration.

Two additional modifications of the supply plant performance standards that were proposed should not be adopted. A proposal by AMPI would include as a basis for pooling a supply plant under this order, limited shipments by supply plants to other order distributing plants. The concept of the proposal was supported by Kraft. The other proposal, which was made by Kraft, would allow a supply plant operator to meet a portion of the pooling standards with direct shipments of milk from farms to distributing plants. AMPI opposed the proposal on the basis that if milk could be direct-shipped to distributing plants the supply plant with which the milk was associated served no useful purpose.

Both of the above proposals are intended to accommodate hypothetical marketing practices that may be adopted by supply plant operators to serve the fluid milk needs of distributing plants. Specifically, the proposals are intended to accommodate milk movements that may be made by minimizing the transportation costs involved. The extent to which transportation savings could be obtained would depend on the location of both the supply plant(s) and the dairy farmers associated with such plant(s) relative to the location of the distributing plants serving this or other Federal order markets.

As indicated previously, there are currently no supply plants serving the market. Consequently, there is no information in the record of this proceeding from which to conclude that either of the proposals are necessary to reflect either supply plant shipments to other order markets or direct shipments of milk of dairy farmers associated with

a supply plant to minimize transportation costs. Without the existence of practical marketing experience it is not possible at this time to determine that the proposals are necessary or that they would promote more orderly and efficient marketing of milk.

In addition to the previously indicated changes, several minor changes of a nonsubstantive nature are included in the construction and wording of the supply plant pooling provisions. In particular, the phrase "Grade A milk received from dairy farmers" is substituted for the phrase "receipts of producer milk" that is used in the current order. There is essentially no difference in the two phrases since Grade A receipts from dairy farmers become receipts of producer milk if the plant becomes a pool supply plant. Use of the substituted phrase, however, requires additional language to include as receipts milk diverted as producer milk from the plant and to exclude from receipts milk received as diverted milk. Use of such terminology was proposed by AMPI in the hearing notice.

The order language adopted herein also excludes the pooling of a supply plant which has automatic pooling status under another Federal order and also meets the performance standards for pooling under this order. The plant could be pooled under this order, however, if the plant operator elects to relinquish pool plant status under the other order. In the absence of any such action by the plant operator, a conflict would exist with regard to which of the two orders would regulate such plant. Adoption of the modification, which was proposed by AMPI, would eliminate such conflict by allowing the plant to continue as a pool plant under the order in which it has automatic pooling status.

9. *Quantity limits and point of pricing on diversions of producer milk under the Central Arkansas order.*

(a) *Quantity limits on diversions of producer milk.* The producer milk definition should be revised to specify that at least 1 day's production of a dairy farmer be physically received each month at a pool plant in order for any milk of such person to be eligible for diversion as producer milk to nonpool plants.

Also, during each of the months of September through January, a cooperative association should be allowed to divert to nonpool plants that are not producer-handler plants a quantity of milk not in excess of one-half of the quantity of producer milk that the association causes to be delivered to and is physically received at pool plants during the month. The operator of a pool plant (other than a cooperative association) should be allowed to divert to nonpool plants that are not producer-handler plants any milk that is not under the control of a cooperative association that is likewise diverting milk to nonpool plants during the month. The quantity of milk that the operator of a proprietary plant may divert for the plant's account during the months of September through January should not exceed one-half of the milk physically received at such pool plant that is eligible to be diverted by the plant operator.

During each of the months of February through August, diversions by cooperative associations to nonpool plants that are not producer-handler plants should be limited to the quantity of producer milk that the association causes to be delivered to and is physically received at pool plants during the month. Similarly, diversions by a proprietary handler to nonpool plants that are not producer-handler plants should be limited to the quantity of milk physically received at such pool plant that is not under the control of a cooperative association that is likewise diverting milk to nonpool plants during the month.

Any milk diverted in excess of the quantity limitations specified should not be producer milk. The diverting handler may designate the dairy farmers whose milk would not be producer milk. Otherwise, the milk last diverted during such month, in lots of an entire day's production, should be excluded first in determining which milk would not be producer milk. The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant shall not be producer milk.

Presently, the order provides that milk of a producer must be received at a pool plant before it is eligible to be diverted as producer milk. After a producer has established an association with the market, his milk may be diverted to nonpool plants on any number of days during the months of February through August and on not more than 10 days during the months of September through January.

AMPI proposed that milk of a dairy farmer should not be eligible for diversion during any month if less than 15 percent of the monthly milk production of such dairy farmer is received as producer milk at a pool plant. It also proposed that the total quantity of milk so diverted by a cooperative should not exceed one-half of the producer milk that the cooperative association causes to be delivered to and is physically received at pool plants. The cooperative proposed that the operator of a pool plant be permitted to divert any milk that is not under the control of a cooperative association that diverts milk during the month. The total quantity of milk so diverted would be limited to one-half of the producer milk physically received at such pool plant that is not under the control of a cooperative association that diverts milk during the month. Any milk diverted in excess of the prescribed limits would not be producer milk.

If over-diversions do occur and the diverting handler fails to designate the dairy farmer deliveries that are not to be producer milk, the cooperative proposed that no milk diverted by the handler during the month to a nonpool plant be producer milk. It further proposed that the quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant should not be producer milk.

Proponent cooperative's representative testified that provisions requiring some minimum association with the market are necessary to assure that milk pooled on the Central Arkansas market is actually available for fluid use. The representative indicated that there have been instances in which dairy farmers have made limited shipments during the fall months to qualify as producers. After such initial shipments, milk of such dairy farmers was taken off the market by diversion to nonpool plants. Under such circumstance, the milk was not available to the Central Arkansas market for fluid use but the dairy farmers continued to draw the blend price under the Central Arkansas order for such milk.

The representative of a proprietary pool plant regulated under the Memphis order proposed that no more than one day's production during the momths of September through January be required to be physically received at pool plants regulated under the Central Arkansas order as a condition for diverting milk of a producer. The representative proposed that during the months of September through January an amount of milk equal to the volume of milk physically received at pool distributing plants could be diverted to nonpool plants. During other months of the year, unlimited diversions would be permitted.

The handler's spokesman pointed out that milk of certain distant producers may not be needed every day of the

month, especially during the season of flush production. In the event there is a need to divert reserve milk supplies to nonpool plants for manufacturing, he indicated that a handler should have the opportunity to move such milk in the most efficient manner. For this reason, he proposed that during the months of September through January only a minimal association with the market be required in order for the milk of a producer to be diverted and that the limit on the quantity of milk diverted be based upon the aggregate quantity of milk physically received at pool plants. Such diversion requirements would permit the milk of the more distant producers to be diverted every day of the year except for one day's production during each of the months of September through January.

Under the existing supply situation, the requirement that at least one day's production of a dairy farmer be delivered to the market each month as a requirement for any milk of that person to be diverted as producer milk is a reasonable standard. The Central Arkansas market is relatively short of milk production throughout the year. Most of the monthly milk production of the producers who are the regular suppliers of the market is needed each month throughout the year including the season of flush production. When the milk production of the regular suppliers of milk is not sufficient to meet the fluid needs of handlers, the milk of dairy farmers who are producers on other Federal milk orders is directed to the Central Arkansas market by the cooperative association whose members are the principal suppliers of milk for this market.

The requirement that at least one day's production of a dairy farmer be physically received each month at a pool plant will assure that each producer whose milk is being diverted maintains an association with the market.

There is no need, however, to require that at least 15 percent of a dairy farmer's production be delivered to a pool plant each month in order for any milk of such producer to be eligible for diversion. Such requirement would unnecessarily limit a handler's ability to divert efficiently the milk of producers. While limits on the quantity of milk associated with the Central Arkansas market through diversions are necessary, such limits should be established on the basis of the aggregate quantity of milk received at pool plants. Such method will provide adequate safeguards on diversions to nonpool plants and provide handlers greater flexibility in moving excess milk supplies to nonpool plants. For example, the provisions adopted herein will enable a handler to divert more often the milk of those producers whose farms are more distant from his plant than those located closest to his plant. Such diversions will benefit the more distant producers by reducing their cost of hauling milk. On days when their milk is not needed at the central market, it can be diverted to nearby manufacturing plants.

The limit on diversions adopted herein would permit up to one-third of the producer milk of a handler to be diverted off the market during the months of September through January. Such limit comports with the limit proposed by proponent cooperative for all months of the year and should accommodate any needed diversions by handlers during the months when milk production declines seasonally. In that regard, the greatest diversions during the last 3 years for the September through January period occurred in December 1978. In that month, 12.8 percent of the total producer milk on the market was not delivered to pool distributing plants.

During the months of February through August when the demand for fluid milk is less and the supply of producer milk is more plentiful than during other months of the year, handlers will find it necessary to divert greater quantities of milk to nonpool plants than during the months of September through January. Accordingly, during the months of February through August, handlers should be permitted to divert producer milk to nonpool plants in an amount equal to the quantity of producer milk physically received at the plant. As a practical matter, there is no reason to have the order provide that the operator of a pool distributing plant may divert any greater quantity than the amount adopted herein. The same would be true for a pool supply plant that is required to make qualifying shipments to pool distributing plants during such months. If such handlers diverted more milk to nonpool plants for manufacturing than was received at their plants, they would be unable to meet the 50 percent Class I utilization required of a pool distributing plant or the shipping percentage required of a pool supply plant.

As provided herein, milk diverted from a pool plant would be included in the plant's receipts for purposes of determining whether or not the plant meets the applicable pooling standards. It is necessary under this procedure to safeguard against a pool plant not meeting the pooling standards because too much milk was diverted from the plant by a cooperative, perhaps without timely knowledge of this by the plant operator. Accordingly, whatever quantity of milk diverted by a cooperative from a pool plant of another handler that would cause such plant to become a nonpool plant should not be considered as producer milk.

(b) *Point of pricing on diverted milk.* All diverted milk should be deemed for pricing purposes to have been received by the diverting handler at the location of the plant to which the milk was diverted, as proposed by AMPI. Currently, diverted milk is priced at the location of the plant from which diverted.

Pricing diverted milk at the location of the plant where such milk is physically received, rather than at the city plant from which diverted, removes the possibility of pool proceeds being used to subsidize distant producers when their milk is diverted to distant manufacturing plants. Currently some distant producers are receiving a blend price f.o.b. the city plant (as if the milk had actually moved to the city) when in fact no transportation costs to the city had been incurred because the milk was diverted to a manufacturing plant located near the producer's farm.

10. *Location adjustment provisions of the Central Arkansas order.* The location adjustment provisions of the Central Arkansas order shoud be amended to provide for a no location adjustment zone consisting of a band of counties running from east to west in the central part of Arkansas. The Arkansas counties to be included in the no location adjustment zone would be Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff and Yell. Also, no location adjustments should apply for milk received at plants located in Oklahoma or Tennessee.

For a plant located in that portion of the State of Arkansas lying to the south of the no location adjustment zone or located in the States of Louisiana, Mississippi, or Texas, the adjustment should be plus 1.5 cents per hundredweight for each 10 miles or fraction thereof between such plant and the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas, if such

plant is more than 60 miles from the nearer of such basing points.

At all other locations more than 60 miles from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas, the location adjustment for milk received at pool plants should be a minus value computed at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof between such plant and such nearer point.

Under the current order provisions, a location adjustment applies to milk received from producers at a pool plant located more than 60 miles from the nearest of the County Courthouse in Arkadelphia, Arkansas; the County Courthouse in Forrest City, Arkansas; or the State Capitol in Little Rock, Arkansas. A minus location adjustment applies at all plants beyond 60 miles of the nearest basing point and is computed at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof between such plant and the nearest basing point.

AMPI proposed that the existing location adjustments provided under the Central Arkansas order be continued except that no location adjustments would apply for milk received at plants located in the State of Tennessee, Mississippi or Oklahoma and plus location adjustments would apply at plants located south of Interstate 40 and more than 60 miles from the nearer of Forrest City or Little Rock, Arkansas. The cooperative proposed that Arkadelphia be dropped as a basing point in order that a location adjustment would apply at a plant located at Camden, Arkansas.

The cooperative indicated that under the location adjustments it was proposing, the current level of Class I prices would be changed at only 2 locations for plants currently regulated under the Central Arkansas order. Under its proposal, the location adjustment at Camden, Arkansas, would be changed from zero to plus 15 cents. At Texarkana, Arkansas-Texas, a plus location adjustment of 21 cents per hundredweight would apply.[3] Presently, milk received at the plant of Midwest Farms, which is located at Texarkana, Texas, receives a minus location adjustment of 12 cents.

There was some confusion interjected as a result of cross-examination of AMPI's witness on whether AMPI intended to apply no location adjustments for milk received at plants located in Oklahoma or intended to continue the minus location adjustments that currently apply in such area. In its brief, however, AMPI reiterated that no location adjustment should apply at plants located in the States of Tennessee, Mississippi or Oklahoma.

Kraft's representative indicated that Kraft was concerned with respect to AMPI's proposed location adjustments for plants located in Oklahoma that would be regulated under the Central Arkansas order. the representative acknowledged the need to establish a Class I price for a pool distributing plant located in Oklahoma that offered neither a competitive advantage or a disadvantage relative to the Class I price applicable at competing plants. Kraft was primarily concerned that the location adjustment applicable to the blend prices for pool plants located in Oklahoma be established so that the blend prices at such plants located in the vicinity of the Arkansas-Oklahoma boundary line would be aligned with the blend prices applicable to Kraft's supply plant at Bentonville, Arkansas, which is fully regulated under the Oklahoma Metropolitan order. In effect, Kraft took the position that no location adjustment to the Class I price should apply at pool distributing plants located in Oklahoma and that location adjustments should apply to the blend prices at pool plants located in Oklahoma. In its brief, Kraft noted that the Secretary should be guided by AMPI's expressions of intent on the record with regard to location adjustments, i.e., "location adjustments would continue to be minus as you went further North or Northwest" out of Central Arkansas.

The existing location adjustments applicable at all plants that are currently operating as fully or partially regulated distributing plants under the Central Arkansas order should be continued except at plants located at Camden, Arkansas, and in the Texarkana area. Currently, no location adjustments apply at the Arkansas plants located at Little Rock, Conway, Ward, and Hot Springs. As a consequence, a Class I differential of $1.94 is applicable at all such plant locations. The current Class I differential of $1.94 should be continued at such plant locations by specifying that no location adjustment shall apply at any plant located in a band of counties in Central Arkansas extending from the eastern border to the western border of Arkansas. A single Class I differential at plants located within such area will provide appropriate alignment of Class I prices at plants in such area relative to plants located immediately east and west of such area. Such pricing would be identical to the Class I differential of $1.94 that applies at plants located in the Memphis area that are regulated by the Memphis order. This differential of $1.94 at plants located in the western part of Central Arkansas would be slightly over the Class I differential under the Oklahoma Metropolitan order at plants in Oklahoma west of the Central Arkansas area.[4] The northern boundary of the no location adjustment zone should be the tier of counties including and extending east of Crawford County since a Class I differential of $1.95 applies at plants in Crawford County under the Fort Smith order. The Southern boundary of the no location adjustment zone should consist of a tier of counties located immediately north of Ouachita County. Such positioning of the southern boundary of the zone will retain the current Class I differential at the Hot Springs, Arkansas plant and permit the application of a plus adjustment at the Camden plant located in Ouachita County.

Forty Arkansas counties should be included in the no location adjustment zone. The counties are Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff and Yell.

The use of the no location adjustment zone instead of proponent's proposal that Interstate Highway 40 be used as the dividing line between plants at which plus and minus location adjustments would apply averts several pricing problems that might otherwise occur. Under AMPI's proposal, a Class I price alignment problem could occur at two competing plants that are separated by Interstate 40 and are located more than 60 miles from the nearer of Forrest City or Little Rock, Arkansas. For example, under AMPI's proposal a plant located at Ft. Smith, Arkansas, south of

[3] The 21 cents per hundredweight would apply to milk received at a plant located from 130.1 miles to 140.0 miles south of the State Capitol in Little Rock, Arkansas. While testimony on the record shows the distance between Little Rock, Arkansas, and Texarkana, Arkansas-Texas, to be 140 miles, the location adjustment that would apply for milk received at a plant in the Texarkana area would depend upon the shortest hard surfaced highway distance between such plant and the State Capitol in Little Rock, as determined by the market administrator.

[4] The Oklahoma Metropolitan order privides that the Class I differential of $1.98 for milk received from producers at a plant located 50 miles or more from the city hall in Oklahoma City shall be reduced 10 cents plus 1.5 cents for each 10 miles or fraction thereof that such plant is more than 150 miles from Oklahoma City.

Interstate 40 would have a plus location adjustment of approximately 24 cents while a plant in the same general area but located north of such highway would have a minus location adjustment of the same magnitude. As a consequence, the Class I differential applicable at a plant located south of Interstate 40 would be $2.18 while the Class I differential applicable at the other plant would be $1.70. Furthermore, such location adjustments would not result in Class I differentials at either of such plants that would be compatible with the Class I differential of $1.95 that is applicable under the Ft. Smith order at plants located within 50 miles of Fort Smith. Also, proponent's proposed Class I differentials for plants in the Ft. Smith area would not be compatible with the Class I differential of $1.94 that proponent would apply at Oklahoma plants located immediately west of the Ft. Smith area (proponent proposed that no location adjustment apply at any plant located in Oklahoma).

The Class I price at plants in Arkansas south of the no location adjustment zone previously described and at plants in the State of Texas should be subject to plus location adjustments.

In general, plus location adjustments are needed at plants located south of the central portion of the Central Arkansas marketing area to increase the Class I differential applicable at such plants to the level of the Class I differentials applicable at other plants in the same general area that are regulated under adjacent Federal milk orders. In the absence of such alignment, the local milk supply would be encouraged to move to plants with higher Class I differentials. To provide the necessary Class I price alignment, the Central Arkansas order should provide for plus location adjustments for milk received at plants located in a southerly direction from the central market.

Presently, no location adjustment applies at the plant at Camden, Arkansas, and a minus location adjustment of $0.12 applies at a plant at Texarkana, Texas. As a consequence of the current location adjustment provisions, the Class I prices applicable at such plants are not appropriately aligned with plants located in that general area which are regulated by other Federal orders. For example, a Class I differential of $2.23 applies at the plant located at Texarkana to the extent that it is a partially regulated distributing plant under the Texas order and a Class I differential of $1.82 applies to the extent that the plant is a partially regulated distributing plant under the current Central Arkansas order. Under the Greater Louisiana order, a Class I differential of $2.47 applies at a plant located at Shreveport which is approximately 70 miles directly south of Texarkana.

The plus location adjustment proposed for the Texarkana area will provide the necessary price alignment in the area south of the no location zone with the Class I prices applicable in such general area under other orders. The plus location adjustment adopted herein would provide a plus adjustment of $0.21 at Texarkana resulting in a Class I differential of $2.15 at such location. Such Class I differential compares favorably with the Class I differential of $2.23 provided under the Texas order for a plant at Texarkana. Furthermore, the plus location adjustment will provide a better alignment of the Central Arkansas Class I price at a Texarkana plant with the Greater Louisiana order Class I price at Shreveport located 70 miles south of Texarkana.

The location adjustment provisions adopted herein would provide for a plus adjustment of $0.15 at Camden resulting in a Class I differential of $2.09 at such location. A Class I differential of $2.09 is needed to assure the availability of a sufficient milk supply at the Camden plant. In the absence of the 15-cent increase in the Class I differential for milk received at that plant, the local milk supply could be marketed at plants under adjacent Federal milk orders and receive a higher return. Furthermore, a Class I differential higher than the central market location is needed to encourage producers in the Little Rock area to make their milk available to the Camden plant when it is needed to supplement the local milk supply. In this regard, the cooperative supplying the Camden plant indicated that it currently charges the Camden plant a higher Class I price than handlers in Little Rock to obtain a producer milk supply for the Camden plant.

The Class I price at plants in the States of Mississippi and Louisiana should also be subject to plus location adjustments. While Class I prices under current provisions of the Central Arkansas order are reduced at plants located outside the marketing area, Class I prices under the Memphis order increase as one moves south from Memphis into the State of Mississippi. The Memphis order provides that at all locations in Mississippi more than 50 miles from Memphis the Class I price shall be increased by a factor related to the cost of transporting milk. The adoption of similar pricing provisions in the Central Arkansas order will provide approximately the same location value for milk at plants in Mississippi that currently applies under the Memphis order. However, instead of applying plus location adjustments at all plants in Mississippi more than 50 miles from Memphis, as provided under the Memphis order, adjustments under the Central Arkansas order should apply at all plants located more than 60 miles from the nearer of Forrest City or Little Rock, Arkansas. This should provide approximately the same location adjustment pricing at Mississippi plants that currently applies under the Memphis order in view of the proximity of Forrest City to Memphis and the 10 mile increase in distance before the adjustment applies. Also, it is reasonable that a similar pricing structure apply to plants located in the State of Louisiana since plants in such southern area would also be expected to have to pay increasingly higher prices to dairy farmers for milk supplies.

No location adjustment should apply at plants located in Oklahoma. Any plant located in Oklahoma that may become associated with this market most likely would compete for milk supplies with handlers regulated under the Oklahoma Metropolitan order. Since the pricing provisions of that order establish a Class I differential of $1.98 in the Oklahoma City area and $1.88 in the Tulsa area, a Class I differential of $1.94 should assure an adequate milk supply for a plant in Oklahoma that might become regulated under the Central Arkansas order.

Kraft's spokesman expressed concern that the zero location ajdustment AMPI proposed to apply to the uniform price for milk that is pooled under the Central Arkansas order and delivered to a plant location in Oklahoma would provide no incentive for producers in eastern Oklahoma and northwestern Arkansas to deliver milk to the central marketplace of the Central Arkansas order. As previously noted, the economic value of milk delivered to distributing plants located in Oklahoma (Class I differentials of $1.88 and $1.98 at Tulsa and Oklahoma City, respectively) approximates the economic value of milk delivered to the central marketplace of the Central Arkansas order (Class I differential of $1.94). For this reason, a producer under the Central Arkansas order who delivers his milk to a pool plant located in Oklahoma should receive a price that approximates the price he would receive for delivering the milk to a pool plant in Little Rock, Arkansas, the central

marketplace of the Central Arkansas order.

Likewise, no location adjustments should apply at plants located in Tennessee. Any plant located in western Tennessee that may become associated with this market would most likely compete for milk supplies with handlers regulated under the Memphis, Tennessee, order. Since the Memphis order provides for a Class I differential of $1.94 in the Memphis area, a Class I differential of $1.94 should assure an adequate milk supply for a plant in western Tennessee that might become regulated under the Central Arkansas order.

At plants located outside the areas previously described, a minus location adjustment should apply. Under the location adjustment provisions adopted herein, the pool plant at Paragould, Arkansas, would continue to have a minus adjustment of $0.135. Other plants at which minus location adjustments would also apply would be located to the north of the marketing area. Minus location adjustments in this general area north of the marketing area are needed to reflect the lesser location value of milk for this market at the more distant northern plants relative to plants nearer the marketing area.

The location adjustment on Class I milk received at plants located outside the areas in which no location adjustment applies should be at the rate (either minus or plus) of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock. This location adjustment rate will result in Class I prices at plants located both north and south of the marketing area that are reasonably aligned with Class I prices in other markets.

The provisions of the Central Arkansas order that limit Class I location adjustment credit on bulk milk transferred betwen plants should be retained. If location adjustment credits were not limited, the pool obligation of the supply plant operator for producer milk transferred to a distributing pool plant as Class I milk would be the Class I price adjusted for the location of the supply plant. Under the order, however, if the distributing plant receiving supply plant milk has sufficient milk from local direct-ship producers to cover all of its Class I sales, the supply plant operator does not receive location adjustment credit on the milk transferred since it is not needed for Class I use.

The basic concept of this limitation on location adjustment credits should be retained. To adapt this concept to the pricing structure adopted herein (which includes the announced Class I price for central market locations with plus or minus price adjustments at other locations), it is necessary that the location adjustment credit provisions be revised. The intent of the limitation provided is to insure that producers on the market do not have their returns lowered through the granting of price credits on milk unnecessarily moved between pool plants for other than Class I use.

In this connection, location adjustment credits should not apply to Class I milk shipped to pool plants in lower-priced zones. Although such shipment would not be a usual movement of milk, it could occur. For example, a plant in Texarkana with receipts in excess of its fluid milk requirements might ship such excess to handlers in Little Rock, Arkansas. The Class I price levels established under the order in Texarkana and other plus location adjustment zones are intended to attract milk to these areas for Class I use at such plant locations and not for reshipment to lower-priced zones. Such reshipments should not be encouraged through the granting of price credits on such milk movements. If the prices provided tend to attract greater quantities of milk than are needed locally, then consideration should be given to whether a lower price should be provided.

An additional modification in the application of Class I location adjustment credits that was proposed should also be adopted to conform with the adoption of plus and minus adjustments to the Class I price under the order. Under the present order provisions, a disallowed location adjustment credit results in the application of the central market f.o.b. Class I price (Class I differential of $1.94) to the transferor-plant. Such price could be either higher or lower than the applicable Class I differential at the transferee-plant. This should be changed so that the transferor plant would have to account for such milk at the Class I price applicable at the transferee-plant. For example, if milk were transferred from a plant with a minus adjustment to a plant with a plus 15-cent adjustment, and there was no location adjustment credit allowed for the transferor-handler, then the transferor-handler would have to account to the pool for such transferred Class I milk at the Class I price at the transferee-plant, i.e., a Class I differential of $2.09. Since the location value of milk in this example is the Class I differential price of $2.09, the order should not apply the lower central market price of $1.94 on any of the transferred milk. Likewise, milk transferred to a plant with a minus 13.5-cent location adjustment from a plant with a greater minus adjustment should reflect the $1.805 location value rather than the higher $1.94 location value applicable in the central market.

Adoption of the above procedure will result in pricing transferred milk that does not receive a location adjustment credit at its proper value at the location of the transferee-plant. In order to fully accomplish this objective, the computation of any location adjustment credits that may be assigned should be based on the difference between the order Class I prices applicable at the transferor and transferee plants rather than at the difference between the Class I price at the transferor plant and the central market Class I price as under current provisions.

Distributing plants relying on supply plant milk for Class I use should be encouraged to draw such milk from the nearest plant or plants. It is possible that pool plant operators may attempt to circumvent such application of the order provisions by claiming that near-in supply plant milk was used in Class III while an equivalent amount of more distant supply plant milk received at the city was used in Class I. Although the more distant plant would be eligible for a location adjustment credit, under the provisions adopted herein such credit would be limited, in this example, to the lesser credit that would have been applicable to the near-in supply plant milk had it been classified as Class I milk.

At the hearing, Kraft suggested two modifications to the location adjustment provisions concerning the assignment of location adjustment credits to milk transferred to distributing plants from supply plants. One modification would increase Class I use at a distributing plant by 10 percent prior to assigning location adjustment credits to milk received from supply plants. The other modification would provide for a pro rata assignment of location adjustment credits to transfers from two or more supply plants to a distributing plant without regard to the location of the supply plants. Kraft stated that the modifications are necessary to help defray the cost of transporting milk from supply plants to distributing plants.

The fact that testimony on the record indicates that location adjustments do not fully cover the cost of hauling milk does not provide a sufficient basis for adopting Kraft's modifications. Both modifications are concerned with the manner in which available location adjustments are assigned to receipts

from various sources rather than the rate of location adjustments that are provided under the order. With respect to the manner in which such adjustments are assigned, both modifications are in conflict with the principle of limiting the assignment of location adjustment credits to discourage the shipment of milk between pool plants for other than Class I use. This record does not provide an adequate basis for relaxing this limitation. Accordingly, the modifications are not adopted.

12. *Miscellaneous Changes in the Three Orders.* This section deals with several conforming changes in the orders as well as miscellaneous modifications in the existing provisions of the orders not discussed elsewhere in this decision. Paragraphs (a)(i), (ii), and (iii) deal with modifications of the Central Arkansas order that were proposed and supported by AMPI. Paragraphs (a)(v) and (vii), (b)(i), (c), (d), and (e) deal with conforming changes or clarification of existing order provisions by the Department. The remaining paragraphs deal with miscellaneous modifications in provisions of the orders and the proponents of such changes are noted therein.

(a) *Miscellaneous Changes in the Central Arkansas Order.*

(i) *Route disposition.* A definition of route disposition under the Central Arkansas order is adopted herein. The definition represents no substantive change from the current order provisions but merely sets forth the definition as a separate section of the order.

(ii) *Distributing plant and supply plant definitions.* Definitions of each of these plants are currently included in the Central Arkansas order in conjunction with the pooling standards for each type of plant. The definitions contained herein modify the current definitions by describing each of these plants in a separate section of the order apart from the pooling standards.

(iii) *Approved plant.* The "approved plant" definition should be deleted from the provisions of the Central Arkansas order. This section is no longer needed since the provisions contained therein have been incorporated in a newly added route disposition definition and the revised definitions of a distributing plant and a supply plant which are adopted herein.

(iv) *Pool plant.* A proposal by Kraft that the Central Arkansas order not include a non-Grade A facility which is physically separated from the Grade A portion of a pool supply plant as part of the pool plant should not be adopted.

A spokesman for the company indicated that Kraft now operates a plant with Grade A and non-Grade A facilities at Bentonville, Arkansas, and the Grade A portion of the plant is pooled as a supply plant under the Oklahoma Metropolitan order. Kraft also operates a similar facility at Springfield, Missouri, and the Grade A portion of the plant is pooled under the St. Louis-Ozarks order. The spokesman for Kraft indicated that the change was proposed to assure that Kraft's Bentonville plant, or a similar operation, would be treated by the market administrator as two separate facilities if such plant supplied milk to distributing plants in the Central Arkansas market.

The treatment accorded Kraft's plants under the Oklahoma Metropolitan and St. Louis-Ozarks orders is the result of administrative determinations since neither of the orders have specific provisions requiring such treatment. There is little reason to presume that a different administrative determination would apply in the Central Arkansas market. Under the circumstances, there appears to be no reason for adopting the proposed modification of the Central Arkansas order.

The pool plant provisions of the Central Arkansas order should not include shipments of packaged fluid milk products from a pool distributing plant to another pool plant in meeting the route disposition requirements for a pool plant. In drafting the pool plant definition of the Central Arkansas order to incorporate the revised distributing plant definition, AMPI proposed that such shipments of packaged fluid milk products be counted as qualifying route disposition of the shipping plant. The spokesman for the cooperative indicated, however, that the association in drafting the proposal intended to make no change in the qualification requirements for a distributing plant. Accordingly, the current qualification standards for pool distributing plants with regard to route disposition should be retained.

(v) *Handler.* The reference to "approved" plants that appears in the handler definition is § 1108.9(a) should be changed to refer to distributing plants and supply plants since definitions of such plants replace the current "approved plant" definition. Also, the reference "§ 1108.12" that appears in § 1108.9(b) should be changed to "§ 1108.13". This change is necessary since the order language adopted herein sets forth the diversion provisions in the producer milk section of the order instead of the producer section.

(vi) *Producer milk.* The producer milk definition of the Central Arkansas order should be revised to provide that milk picked up by a handler at the farm in a bulk tank truck but not received at a plant until the next month would be producer milk in the month in which the milk is picked up.

The modification of the producer milk definition adopted herein carries out the basic objectives proposed by the principal cooperative association supplying the Central Arkansas market. There was no opposition to the proposed change.

Under the present accounting procedures, bulk tank milk that is picked up at the farm but not physically received at a plant until the following month is treated as a receipt of producer milk in such following month. This procedure presents accounting problems, particularly when milk passes through a reload facility and a portion of the load on the pick-up tanker is transferred to an over-the-road tanker and received at a plant that month, while the remainder is held at the reload facility for delivery to a plant the next month. While administrative guidelines have been adopted to promote uniform accounting procedures for bulk milk throughout the Federal order system, the procedures have not fully resolved the accounting problems to the satisfaction of affected parties. Further, individual producers have not understood the deferred settlement for milk that results when milk picked up in the current month is not physically received at a plant during that month.

Dairy farmers need not be required to wait one and a half months before receiving the uniform price for milk that is picked up at their farms on the last day of the month but is not received at a plant until the following month. The accounting procedure will be simplified and should be more readily accepted if milk is pooled in all cases in the month in which it is picked up at the farm. The changes provided herein will permit pooling of producer milk in the month it is picked up at the farm irrespective of whether the milk is received at a plant in the current or the following month. Milk picked up by a handler in the current month but not received at a plant will be included in the handler's end-of-the-month inventory and will be priced at the location of the plant where the milk is physically received in the following month. Since this milk presumably will be received at a plant on the 1st or 2nd day of the following month, the handler will know the location of the plant of actual receipt in time to include this information in his monthly report. If, however, none of the milk in the pick-up tanker is received at a plant, such milk will not be included in

the handler's report and he will have no pool obligation on it. This conforms with the present provisions which tie the producer milk provisions to its receipt at a plant.

If the operator of a pool plant is the first accountable handler for the milk, the plant operator will account for this producer milk as part of the plant's end-of-the-month inventory and will be charged the Class III price in the month it is picked up at the farm. In the following month, this milk will be treated in the same manner as other fluid milk products the plant operator had in inventory.

If a cooperative association bulk tank handler is the first accountable handler, such cooperative will account for the milk in transit as inventory and at the Class III price and will be credited at the blend price. Additional conforming changes are needed to implement this procedure to insure that in the following month the cooperative is credited for its pool obligation in the preceding month on such milk. In the following month, this milk is included in the obligation of the pool plant operator who physically received it and the plant operator will account to the market administrator for this milk at the classfied prices. Such monies would be deposited in the producer-settlement fund, but since the milk was pooled in the preceding month that quantity of milk would not be included in the pool computation of the current month.

The recommended decision provided a new paragraph under the Central Arkansas order in the section dealing with handler's value of milk for computing the uniform price. The paragraph provided that a credit be accorded a cooperative association acting as a bulk tank handler with respect to milk in inventory at the beginning of the month that was delivered to a pool plant during the month. The credit was computed by multiplying the Class III price as adjusted by the butterfat differential for the preceding month by the hundredweight in inventory. However, the Class III price need not be adjusted by the butterfat differential to compute the proper credit. The amount of the credit to be applied need only correspond to the value assigned to the product when it is picked up at the farm in the prior month. This can be accommodated by multiplying the amount in each instance by the Class III price for milk. Furthermore, in some instance it would not be possible to adjust the Class III price by the butterfat differential because the butterfat content of the milk is not available. This situation could arise if butterfat testing is not done on a daily basis. For these reasons, the decision has been changed to delete the requirement that the Class III price be adjusted by the butterfat differential.

It should be noted here that bulk tank milk being diverted by a cooperative from another handler's pool plant to a nonpool plant should not be included in the cooperative's ending inventory if the milk is in transit at the end of the month. Instead, the final accounting for the milk should be in the month in which it is picked up at the farm. The inventory accounting procedure is not necessary in this case since the cooperative is the only accountable handler under the order for such milk. The milk is received by the cooperative, of course, at the time it is picked up at the farm.

(vii) *Payments From the Producer-Settlement Fund.* The producer-settlement fund of the Central Arkansas order provides that if the balance in the producer-settlement is not sufficient to make all payments required to be made from such fund, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available. Conforming changes should be made in that section to provide that if a handler who is required to channel payments for producers through the market administrator fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(b) *Miscellaneous Changes in the Memphis Order.* (i) *Announcement of uniform price.* Announcement of the uniform price under the Memphis order should be changed from the 13th to the 11th day of the month. Such change will make the announcement of the uniform price conform to the date the uniform price is announced under the Central Arkansas order. The principal cooperative supplying milk to the Memphis, Fort Smith and Central Arkansas orders proposed that the announcement of the uniform price in each of the three orders be announced on the 13th of the month. The cooperative's proposal, however, was predicated on the market administrator collecting all payments from handlers and then paying producers and cooperative associations by means of two partial payments and one final payment. Also, the cooperative proposed a revised payment schedule and requested that all payments be made so that they would be received by the due date.

Under the proposed payment procedure adopted herein, the uniform price should be announced as soon as possible. The earlier announcement date in conjunction with requiring handlers to pay the classified use value to the market administrator by the 14th instead of the 12th of the month will provide handlers 3 days in which to make their final payment for producer milk. In that regard, as discussed previously, payment to the market administrator would need to be received by the market administrator on or before the due date. A further reason for advancing the announcement date of the uniform price is related to the adoption of late payment charges under the three orders. In such circumstance, it is necessary that sufficient time be provided between the announcement and payment dates so that handlers can make such payment without incurring a late payment charge.

(c) *Miscellaneous Changes In The Fort Smith and Central Arkansas Orders.* Several conforming changes should be made in the other reports sections of the Fort Smith and Central Arkansas orders in recognition that the market administrator would be making payments to producers and cooperative associations in the event of late payment by handlers. In such event, the market administrator would need to know the name and address of each producer from whom milk was received during the first 15 days of the month, the total pounds of milk received during such period from each producer, and the amount and nature of any deduction authorized by the producer.

Conforming changes are also made in the "payroll reports" section of each of the orders because handlers who make payments to the market administrator, rather than to producers and cooperative associations, would not have a producer payroll. Also, the payroll report section is modified to delete the requirement to report the butterfat test since this information is submitted in other reports. Finally, the producer payroll report is modified to require the reporting of the dates on which payments were made to producers.

The recommended decision provided that a handler under the Central Arkansas order who is making payment to a producer must furnish each producer information with respect to the amount of milk received during the month and other related information on or before the 15th of the month. The date for furnishing such information should be changed to the 17th of the month. The

2-day delay will allow the handler to include such information along with the mailing or delivery of final payment to such producer which is due on or before the 17th of the month.

(d) *Miscellaneous Changes In The Memphis and Central Arkansas Orders.* The reporting sections of the Memphis and Central Arkansas orders should be modified to require an exchange of information between a cooperative and a handler relative to bulk milk received from a plant operated by a cooperative association. This information is necessary since the orders are being revised to specify that handlers must make payment to a cooperative association under the Central Arkansas order and to the market administrator under the Memphis order for bulk milk received from a plant operated by the cooperative association.

The Memphis and Central Arkansas orders should provide that amounts due the market administrator from a cooperative associations shall be offset by amounts due the cooperative from the market administrator. Requiring a cooperative to make payment to the market administrator who would then return such payment to the cooperative would be an economic hardship on the cooperative and would serve no useful purpose.

The recommended decision provided for a new paragraph to be added under the "other reports" section of the Memphis order. Reference in such paragraph was made to "pool plant" on three occasions. However, the order does not use the term "pool plant" in any other paragraph but instead uses the term "fluid milk plant" in that context. For this reason, the language in the added paragraph has been changed by substituting the term "fluid milk plant" for the term "pool plant" in all instances where the term appears.

(e) *Miscellaneous Changes In The Memphis, Fort Smith and Central Arkansas Orders.* The Memphis, Fort Smith and Central Arkansas orders should be revised to make it clear that assignments may be deducted from both the partial and final payments to producers. A proposal by the cooperative association that deductions from the partial and final payments may not exceed the amount due producers should also be adopted. Such limitation is necessary in order to assure than an overpayment to a producer does not result. Also, the orders should provide that assignments must have been paid assignees by the date payment is due producers. In the absence of such limitations, handlers could withhold payments due producers on the pretext that such funds are being held to pay future assignments.

One exceptor opposed the requirement that deductions which a producer has authorized to be made from the partial payment must be paid to assignees by the date the partial payment is due the producer. Exceptor held that such requirement would interfere with the ability of the handler, the producer and the third party creditor to make the most desirable payment arrangements. In support of the exception, the exceptor noted that in many cases the producer obtains no benefit from 2 assignment payments by the handler, that some creditors prefer to receive payments once per month, and that the requirement would result in additional paperwork and expense to the handler.

While the arguments presented may be true in some cases, the question remains as to whether the handler should be permitted to benefit by withholding the deduction until the final payment is due the producer. If handlers were permitted to withhold payments to assignee, this could result in a competitive advantage for those who pay third-party creditors. These handlers would, in effect, receive an interest-free loan equivalent to the amount of the authorized deduction for the period between the partial payment and the final payment dates on which producers are paid. Accordingly, exceptor's request that handlers be permitted to withhold authorized deductions from partial payments to producers is denied.

(f) *Miscellaneous Changes in the Fort Smith Order.* Announcement of the uniform price under the Fort Smith order should be changed from the 12th to the 11th of the month. As previously noted, the order is being revised to require a handler who is more than 3 days late in payment of an order obligation to make final payment of money due producers to the market administrator. Such payments must be made on or before the day prior to the date on which the handler would otherwise be required to make final payment to a cooperative association on behalf of producers or to individual producers. Currently, a handler is required to make final payment to a cooperative association on or before the 13th day of the month. Thus, a handler who is required to transmit payments due producers through the market administrator would need to make such payment on or before the 12th day of the month. For this reason, announcement of the uniform prices on the 12th would not be timely. Accordingly, the date for announcing the uniform price should be advanced 1 day. Such change in conjunction with the change in the uniform price announcement date for Memphis will result in the uniform prices in each of the 3 orders being announced on the 11th.

In addition, the order should be revised to make it clear that if the market administrator does not receive full payment from a handler for producer milk, the market administrator shall reduce uniformly the payments to all producers of such handler and complete such payments when the remaining amount is received. This is necessary since the market administrator would collect payment from handlers and pay producers in the event of late payment by a handler.

Rulings on Proposed Findings and Conclusions

A brief filed on behalf of one interested party contended that certain of the payment provisons provided herein cannot be adopted since the provisions would increase the returns to producers and no economic data upon which the Secretary may make the analysis and findings required by section 608c(18) of the Act in support of such increase were placed in evidence by the proponent cooperative association. It is noted in this regard that the payment provisions of the orders provided herein would not increase compensation to producers. Thus, the issue raised in the handler's brief is moot.

Other briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict

with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid orders:

(a) The tentative marketing agreement and the order, 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 marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, 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, a marketing agreement upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in §§ 1097.85, 1102.85, and 1108.85 of the aforesaid tentative marketing agreements and the orders as proposed to be amended.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

September 1981 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas is approved or favored by producers, as defined under the terms of each of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the respective marketing areas.

Signed at Washington, D.C., on January 26, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order [1] amending the orders, regulating the handling of milk in certain specified marketing areas.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in §§ 1097.85, 1102.85, and 1108.85.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending each of the specified orders contained in the recommended decision issued by the Deputy Administrator, marketing Program Operations, on September 22, 1981 and published in the **Federal Register** on September 29, 1981 (46 FR 47588) shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to the following modifications:

1. Section 1097.32(d) is revised.
2. Section 1108.60(g) is revised.
3. Section 1108.73(c)(2) is revised.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

PART 1097—MILK IN MEMPHIS, TENNESSEE, MARKETING AREA

1. In § 1097.32, a new paragraph (d) is added to read as follows:

§ 1097.32 Other reports.

* * * * *

(d) On or before the second day prior to the reporting dates specified in § 1097.31, each cooperative association that operates a fluid milk plant from which bulk fluid milk products were transferred to fluid milk plants of other handlers within the time periods described in § 1097.31 shall report to each such fluid milk plant operator and to the market administrator the name and location of the transferor plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

2. In § 1097.62, paragraph (b) is revised to read as follows:

§ 1097.62 Announcement of uniform prices for each handler and butterfat differential.

* * * * *

(b) The 11th day after the end of each month the applicable uniform prices for each handler pursuant to § 1097.61 for such month.

3. Section 1097.71 is revised to read as follows:

§ 1097.71 Payments to market administrator.

(a) Subject to paragraphs (d) and (e) of this section, each handler shall pay to the market administrator on or before the 2nd day prior to the last day of each month an amount determined by multiplying the handler's receipts during the first 15 days of such month of producer milk (excluding the milk of any producer who had discontinued shipping milk to such handler before the 25th of the month and, in the case of a handler described in § 1097.9(c), producer milk delivered to fluid milk plant) and milk from a handler described in § 1097.9(c) by the applicable partial payment rate less proper deductions authorized in writing by producers from whom the handler received milk, provided that the amount deducted for each producer does not exceed the value of the milk received from the producers during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(b) Subject to paragraphs (d) and (e) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1097.60 (a), as adjusted by the butterfat differential specified in § 1097.74 and pursuant to § 1097.60 (b), (c) and (d), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month: and

(2) Proper deductions that were authorized in writing by producers from whom the handler received milk, provided that the amount deducted for each producer does not exceed the valve of the milk received during the final payment period and provided that the handler has paid such deductions to assignees by the date payment is otherwise due the producer;

(c) Each handler who received bulk fluid milk and bulk fluid cream products from a fluid milk plant operated by a cooperative association shall pay the following amounts for such products to the market administrator, who in turn shall transmit such money to the cooperative association.

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate. If the handler so elects, such prices may be adjusted by the butterfat differential specified in § 1097.74 for the preceding month.

(2) On or before the 14th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1097.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1097.74, plus the applicable administrative assessment, less any payments made by the handler pursuant to paragraph (c)(1) of this section. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant plus the applicable administrative assessment rate.

(d) The following conditions shall apply with respect to the payments prescribed in paragraph (a), (b) and (c) of this section:

(1) Payment to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(e) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1097.73(c).

4. A new § 1097.72 is added to read as follows:

§ 1097.72 Rate of partial payments.

Partial payment rates shall be computed as follows:

(a) During the months of March through July, the previous month's Class III price.

(b) For the months of August through February, the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant.

5. Section 1097.73 is revised to read as follows:

§ 1097.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (e) of this section, the market administrator shall pay each producer on or before the last day of each month for milk which was received during the first 15 days of each month; provided, payment pursuant to § 1097.71(a) has been received by the market administrator. Such payment shall be uniform to all suppliers of each plant at a rate per hundredweight equal to that received by the market administrator less the deductions authorized by each producer pursuant to § 1097.71(a).

(b) Subject to paragraphs (c) through (e) of this section, the market administrator shall pay each producer on or before the 16th day after the end of each month for milk for which payment pursuant to § 1097.71(b) has been received by the market administrator. Such payment shall be at the uniform price(s) computed pursuant to § 1097.61 for the month, subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1097.74 and 1097.75;

(2) Less the payment described in paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1097.86;

(4) Less the authorized deductions specified in § 1097.71 (a) and (b) (2); and

(5) Any adjustments for errors in calculating payments to an individual producer for past months.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having

authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section.

(d) The following conditions shall apply with respect to the payments prescribed in paragraph (a) through (c) of this section:

(1) If the date by which such payments are to be made falls on a Saturday, or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1097.71(c)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator, the corresponding partial or final payments prescribed in paragraphs (a) through (c) of this section may be delayed by the same number of days.

(e) If the market administrator does not receive the full payment required of a handler pursuant to § 1097.71 he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payment pursuant to this section following the date on which the remaining payment is received from such handler.

6. A new § 1097.78 is added to read as follows:

§ 1097.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1097.71, 1097.73, 1097.77, and 1097.85 shall be increased one percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

7. Section 1097.85 is revised to read as follows:

§ 1097.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of milk at fluid milk plants from producers (including receipts from a handler described in § 1097.9(c) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1097.44(a) (7) and (11) and the corresponding steps of § 1097.44(b);

(c) Receipts of milk by a handler described in § 1097.9(c) in excess of that specified in paragraph (a) of this section; and

(d) Receipts of milk by a handler described in § 1097.9(b).

PART 1102—MILK IN FORT SMITH, ARKANSAS, MARKETING AREA

1. Section 1102.31 is revised to read as follows:

§ 1102.31 Payroll reports.

On or before the 20th day after the end of each month, each handler who pays producers pursuant to § 1102.73 shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(a) His name and address and the pounds of milk received;

(b) The prices per hundredweight, the gross amounts due, the amount and nature of any deductions, and the net amounts paid; and

(c) The dates such payments were made.

2. Section 1102.32 is revised to read as follows:

§ 1102.32 Other reports.

(a) On or before the 20th day of each month, each handler described in § 1102.9(a) who is required pursuant to § 1102.73(a) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The name and address of each producer from whom milk was received who has not discontinued shipping milk to the handler;

(2) The total pounds of producer milk received from such producer;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk; and

(4) In lieu of reporting in accordance with paragraphs (a) (1), (2) and (3) of this section, a handler may, if he so chooses, report the sum of the pounds of milk received from individual producers whose milk is marketed by a cooperative association that is authorized to receive payment for such milk. The handler shall also report the sum of the authorized deductions of such producer.

(b) On or before the 7th day after the end of each month, each handler described in § 1102.9 (a) and (b) shall report to the market administrator the following information with respect to its receipts of milk during such month:

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer, its average butterfat content and for the months of March through July the pounds of base milk; and

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions as authorized in writing by the producer, to be made from the final payment for such milk.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1102.30 and 1102.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

3. In § 1102.62, paragraph (b) is revised to read as follows:

§ 1102.62 Announcement of uniform price for each handler and butterfat differential.

* * * * *

(b) The 11th day after the end of each month the applicable uniform prices for each handler pursuant to § 1102.61 for such month:

4. A new § 1102.72 is added to read as follows:

§ 1102.72 Rate of partial payments.

Partial payment rates shall be computed as follows:

(a) During the months of March through July, the previous month's Class III price.

(b) For the months of August through February, the Previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant.

5. Section 1102.73 is revised to read as follows:

§ 1102.73 Payments to producers and to cooperative associations.

(a) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under Part 1102 shall pay to the market administrator the amount the handler would have otherwise been required to pay to producers and cooperative associations pursuant to paragraphs (b) and (c) or paragraph (d) of this section. Payment shall be made to the market administrator on or before the day prior to the dates specified in paragraphs (b) and (c) or paragraph (d) of this section and such payments shall continue until the handler has met all payment obligations for 3 consecutive months. Payment to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. If the date by which payments must be made to the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(b) Except as provided in paragraph (a) and (d) of this section, each handler shall pay on or before the last day of each month for milk received from producers during the first 15 days of the month to each producer who did not discontinue shipping milk to such handler before the 25th of the month, an amount equal to not less than the partial payment rate pursuant to § 1102.72 multiplied by the hundredweight of milk received from such producer, less proper deductions authorized in writing by the producer. Such deductions shall not exceed the value of the milk received during the partial payment period and the handlers must have paid such deductions to assignees by the date payment is otherwise due the producer.

(c) Except as provided in paragraph (a) and (d) of this section, each handler shall make payment on or before the 15th day after the end of the month to each producer for all milk received from such producer during the preceding month at the uniform price(s) computed pursuant to § 1102.61 for the month subject to the following adjustments:

(1) Any applicable adjustments pursuant ato §§ 1102.74 and 1102.75;

(2) Less the payment described in paragraph (b) of this section;

(3) Less deductions for marketing services pursuant to § 1102.86;

(4) Less proper deductions authorized in writing by such producer provided that the deductions for the month do not exceed the value of the milk received during the month and the handler has paid such deductions to assignees by the date payment is otherwise due the producer;

(d) In lieu of payments ot producers pursuant to paragraphs (b) and (c) of this section, each handler, on or before the 2nd day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (b) and (c) of this section.

(e) If the market administrator does not receive the full payment required of a handler pursuant to paragraph (a) of this section, he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

6. A new § 1102.78 is added to read as follows:

§ 1102.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1102.73, 1102.77, 1102.85 or 1102.86 shall be increased one percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

7. Section 1102.85 is revised to read as follows:

§ 1102.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month six cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production); and

(b) Other source milk allocated to Class I pursuant to § 1102.44(a) (7) and (11), and the corresponding steps of § 1102.44(b).

8. Section 1102.86 is revised to read as follows:

§ 1102.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers, pursuant to § 1102.73, shall deduct seven cents per hundredweight or such amount not exceeding seven cents per hundredweight as may be prescribed by the Secretary. Each handler making such deductions, shall pay the deductions to the market administrator on or before the 15th day after the end of the month. Such moneys shall be used by the market administrator to sample, test and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association, as determined by the Secretary, is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of milk for which such deduction was computed for each producer.

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

1. A new § 1108.3 is added to read as follows:

§ 1108.3 Route disposition.

"Route Disposition" means any delivery of a fluid milk product classified as Class I milk to a wholesale or retail outlet (including any delivery through a vendor or a plant store) except a delivery to another pool plant.

2. Section 1108.5 is revised to read as follows:

§ 1108.5 Distributing plant.

"Distributing plant" means a plant which is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month there is route disposition in the marketing area.

3. Section 1108.6 is revised to read as follows:

§ 1108.6 Supply plant.

"Supply plant" means a plant which is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are shipped during the month to a pool plant.

4. Section 1108.7 is revised to read as follows:

§ 1108.7 Pool plant.

Except as provided in paragraph (c) of this section "pool plant" means:

(a) A distributing plant from which during the month packaged fluid milk products, except filled milk, disposed of as route disposition are equal to not less than 50 percent of its receipts of fluid milk products from producers (including producer milk diverted from the plant), handlers described in § 1108.9(c), and other pool plants and from which not less than 10 percent of such receipts is disposed of in the marketing area in the form of packaged fluid milk products, except filled milk, as route disposition .

(b) A supply plant from which during the month fluid milk products, except filled milk, equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers (including producer milk diverted from such plant but excluding milk received as diverted milk) and handlers described in § 1108.9(c) is shipped to and received at distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) A supply plant which is a pool plant under this paragraph for each of the months during the period September through January shall upon written application to the market administrator, on or before the end of such period, be designated as a pool plant for the following months of February through August;

(2) The shipping percentage specified in this paragraph may be increased or decreased temporarily by 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. For any of the months of February through August, a minimum shipping percentage of up to 10 percent may be established by the Director for all pool supply plants that are qualified as a pool plant pursuant to paragraph (b)(1) of this section. Before making such a finding(s) the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping requirements pursuant to this subparagraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1108.30;

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, unless one of the following conditions applies:

(i) If the plant is located within the marketing area and was a pool plant under this order during the immediately preceding month (except that prior pool plant qualification need not be met during the first month that the amended order is effective), it shall continue to be subject to all of the provisions of this part until the third consecutive month in which 50 percent or more of the plant's route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order; or

(ii) If the plant is located outside the marketing area and was a pool plant under this order in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of the plant's route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under another federal order.

§ 1108.7a [Removed]

5. Section 1108.7a is removed.

§ 1108.9 [Amended]

6. In § 1108.9(a) change the word "approved" to the words "distributing or supply" and in § 1108.9(b) change the reference from § 1108.12 to § 1108.13.

7. Section 1108.12 is revised to read as follows:

§ 1108.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1108.9(c); or

(3) Diverted from a pool plant in accordance with § 1108.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1108.44(a)(8)(iii) and the corresponding step of § 1108.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

8. Section 1108.13 is revised to read as follows:

§ 1108.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1108.9(c);

(c) Picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month. Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1108.9(c), is the handler for such milk; and

(d) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the handler operating such pool plant or a handler described in § 1108.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless during the month at least one day's production of such dairy farmer is physically received as producer milk at a pool plant;

(2) The total quantity of milk so diverted by a cooperative association shall not exceed, during any month of September through January, one-half of the quantity, and during all other months, the quantity, of producer milk that the cooperative association causes to be delivered to pool plants and that is physically received thereat;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted shall not exceed, during any month of September through January, one-half of the quantity, and during all other months, the quantity, of producer milk physically received at such pool plant that is eligible to be diverted by the plant operator;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d) (2) and (3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers' deliveries that are not to be producer milk, otherwise the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which milk should not be producer milk;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant shall not be producer milk; and

(6) Diverted milk shall be priced at the location of the nonpool plant to which diverted.

9. Section 1108.31 is revised to read as follows:

§ 1108.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler who pays producers pursuant to § 1108.73 shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address and the pounds of milk received;

(2) The prices per hundredweight, the gross amounts due, the amount and nature of any deductions, and the net amounts paid; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of each month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1108.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

10. Section 1108.32 is revised to read as follows:

§ 1108.32 Other reports.

(a) On or before the 20th day of each month, each handler described in § 1108.9(a) who is required pursuant to § 1108.71(c) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The name and address of each producer from whom milk was received who has not discontinued shipping milk to the handler;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1108.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) Each handler, except a producer-handler and a handler making payments pursuant to § 1108.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the seventh day of each month for each producer for the preceding month:

(i) His name and address or other appropriate identification;

(ii) The total pounds of milk and butterfat received from such producer, including, for the months of March through July the pounds of base milk;

(iii) The location at which such milk was received;

(iv) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(v) The total pounds of skim milk and butterfat received from a handler described in § 1108.9(c); and

(vi) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1108.12 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(c) On or before the second day prior to the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator and to the market administrator the name and location of the transferor plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a), (b) and (c) of this section and §§ 1108.30 and 1108.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

11. Section 1108.52 is revised to read as follows:

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received from producers or a handler described in § 1108.9(c) at a plant located more than 60 miles by the shortest hard surfaced highway distance as determined by the market administrator from the nearer of the county courthouse in Forrest City, Arkansas, or the State Capital in Little Rock, Arkansas, and which is classified as Class I without movement in bulk form to another pool plant at which a higher Class I price applies, the price specified in § 1108.50(a) shall be adjusted by amount stated in paragraph (a) (1) through (3) of this section for the location of such plant:

(1) Except as provided in paragraph (a) (2) and (3) of this section, the adjustment shall be minus 1.5 cents for each 10 miles or fraction thereof between such plant and such nearer basing point;

(2) For a plant located within the Arkansas counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittenden, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff, and Yell or in the States of Oklahoma and Tennessee, no location adjustment shall apply; and

(3) For a plant located in that portion of the State of Arkansas lying to the south of the no location adjustment zone specified in paragraph (a)(2) of this section or located in the States of Louisiana, Mississippi or Texas, the adjustment shall be plus 1.5 cents for each 10 miles or fraction thereof between such plant and such nearer basing point.

(b) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee plant subject to a location adjustment credit for the transferor plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee plant after the computations pursuant to § 1108.44(a)(12) an amount equal to the pounds of skim milk in receipts of milk at the transferee plant from producers and handlers described in § 1108.9(c), and in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor plant at which the Class I price is lower than the Class I price at the transferee plant by the difference in Class I prices applicable at the transferor plant and transferee plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1108.42(a) and at which the applicable Class I price is less than the Class I price at the transferee plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

5. Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b)(1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

12. In § 1108.60, a new paragraph (g) is added to read as follows:

§ 1108.60 Handler's value of milk for computing uniform price.

* * * * *

(g) Subtract for a handler described in § 1108.9(c) the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month.

13. In § 1108.61, paragraph (a)(2) is revised to read as follows:

§ 1108.61 Computation of uniform prices (including weighted average price and base and excess prices).

(a) * * *

(2) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1108.75.

* * * * *

14. Sections 1108.71, 1108.72 and 1108.73 are revised to read as follows:

§ 1108.71 Payments to the producer-settlement fund.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of the month the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1108.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1108.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value was computed pursuant to § 1108.60(f).

(b) Subject to paragraph (d) of this section, each person who operated an order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator on or before the 25th day after the end of each month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other

order plant (but not to be less than the Class III price) and the Class III price.

(c) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under Part 1108 shall pay to the market administrator the amount the handler would have otherwise been required to pay to producers and cooperative associations pursuant to § 1108.73. Payment shall be made to the market administrator on or before the day prior to the dates specified in § 1108.73 and such payments shall continue until the handler has met all payment obligations for 3 consecutive months.

(d) The following conditions shall apply with respect to payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator.

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(3) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1108.73 (b) and (d).

§ 1108.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after the end of each month the market administrator shall pay to each handler except one making payment pursuant to § 1108.71(c) the amount, if any, by which the amount computed pursuant to § 1108.71(a)(2) exceeds the amount computed pursuant to § 1108.71(a)(1).

(b) If the market administrator received payment from a handler(s) pursuant to § 1108.71(c), he shall distribute such amount plus any amount due such handler(s) pursuant to paragraph (a) of this section to producers and to cooperative associations in the same manner as provided in § 1108.73. In the event the handler fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(c) If at any time the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1108.73 Payments to producers and to cooperative associations.

(a) Except as provided in § 1108.71(c) and paragraphs (b), (d) and (f) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1)(i) On or before the last day of each month of March through July to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the previous month's Class III price multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer, provided that the deductions do not exceed the value of the milk received during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(ii) On or before the last day of each month of August through February to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer from whom the handler received milk, except that the amount deducted shall not exceed the value of the milk received during the partial payment period and provided that the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(2) On or before the 17th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk, or base milk and excess milk, received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1108.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer, provided that the deductions do not exceed the value of the milk received during the final payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1108.72(a) for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (f) of this section, in the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler other than one specified in § 1108.71(c) shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section.

(c) Each handler making payment pursuant to this section shall furnish the person to whom payment is to be made with the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer or from each member of the cooperative association during the first 15 days of such month;

(2) On or before the 7th day of the following month to a cooperative association for its individual members, or on or before the 17th day of the following month to producers:

(i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk;

(ii) For the months of March through July, the pounds of base milk received;

(iii) The amount or rate and nature of deductions made from payments; and

(iv) The amount and nature of payments due pursuant to § 1108.77.

(d) Except as provided in § 1108.71(c) and paragraph (f) of this section, each handler shall make payment to a

cooperative association with respect to receipts of milk for which it is the handler described in § 1108.9(c):

(1) On or before the 2nd day prior to the last day of the month, an amount equal to the applicable partial payment rate specified in paragraph (a)(1) of this section times the volume received during the first 15 days of the delivery period; and

(2) On or before the 15th day after the end of each month, an amount equal to not less than the value of such milk at applicable class price(s) adjusted by the butterfat differential pursuant to § 1108.74 less payment made pursuant to paragraph (d)(1) of this section.

(e) Subject to § 1108.71(c), each handler who received bulk fluid milk and bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the cooperative association.

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate specified in paragraph (a)(1) of this section. If the handler so elects, such prices may be adjusted by the butterfat differential specified in § 1108.74 for the preceding month.

(2) On or before the 15th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1108.42 (a) by the applicable class price, as adjusted by the butterfat differential specified in § 1108.74, less any payments made by the handler pursuant to paragraph (e)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant plus the applicable administrative assessment rate.

(f) If the application of § 1108.71(d)(2) results in a delay in the payment by the market administrator to handlers, the payments prescribed in paragraphs (a), (b) and (d) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to § 1108.71(c), he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

15. Section 1108.75 is revised to read as follows:

§ 1108.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to § 1108.73, the uniform price and uniform price for base milk computed pursuant to § 1108.61 for the month shall be adjusted by the amounts set forth in § 1108.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1108.71, the weighted average price shall be adjusted by the amount set forth in § 1108.52 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

16. A new § 1108.78 is added to read as follows:

§ 1108.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1108.71, 1108.73, 1108.76 1108.77, 1108.85 or 1108.86 shall be increased one percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

17. Section 1108.85 is revised to read as follows:

§ 1108.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1108.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1108.9(c);

(c) Other source milk allocated to Class I pursuant to § 1108.44(a) (7) and (11) and the corresponding steps of § 1108.44(b), except such other source milk that is excluded from the computations pursuant to § 1108.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat substracted pursuant to § 1108.76(a)(2).

18. Section 1108.86 is revised to read as follows:

§ 1108.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of a handler's own farm production) pursuant to § 1108.73 shall deduct seven cents per hundredweight, or such amount not exceeding seven cents per hundredweight as may be prescribed by the Secretary. Each handler making such deductions shall pay the deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the sampling, testing and weighing of other milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom a cooperative association, as determined by the Secretary , is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of milk for which

such deduction was computed for each producer.

[FR Doc. 82-2386 Filed 1-28-82; 8:45 am]
BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins PE-63, Specification for Microwave Radio Equipment, Bulletin 345-57

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to issue a revised Bulletin 345-57, REA Specification for Microwave Radio Equipment, PE-63. The last issue of this specification was in June 1969. Since that date technology in the electronics industry and in the design of telephony electronics has undergone significant advances. Many of the improvements have already received widespread acceptance by manufacturers and users of telephony electronics. There is a need to update the REA Specification for Microwave Radio Equipment to reflect these improvements so that REA telephone borrowers will continue to provide their subscribers with the most modern and efficient telephone service.

DATE: Public comments must be received by REA no later than March 30, 1982.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: C. F. Buster, Jr., Chief, Transmission Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1367, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3917. The draft Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A by issuing a revised Bulletin 345-57. This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as not major. A Regulatory Flexibility Analysis is not required and an OMB Circular A-95 review is not applicable to this action.

This document was last revised in 1969, and there have been significant advances in technology since that time. The existing document is not applicable to much of the new technology, so that its continuation would have forced REA borrowers to use outmoded less cost-effective technology. If the existing specification was withdrawn rather than revised there would be no REA radio equipment specification which manufacturers would be required to meet. Unacceptable radio equipment could be sold to REA borrowers which would result in the loss of telephone system effectiveness and a threat to REA loan security. As a result, revision of the document along the proposed lines was considered to be in the best interest of the program.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

Dated: January 25, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-2328 Filed 1-28-82; 8:45 am]
BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM-2-11]

Filing of Petition for Rulemaking; Wells Eddleman

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Petition for Rulemaking from Wells Eddleman.

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated September 23, 1981, filed by Wells Eddleman. The petition, which has been assigned Docket No. PRM-2-11, requests that the Commission amend its regulations in 10 CFR Part 2 to require a separate operating license hearing for each power reactor unit at a nuclear plant site.

DATE: Comment period expires March 30, 1982.

ADDRESSES: A copy of the petition for rulemaking is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492-7086.

SUPPLEMENTARY INFORMATION: The petitioner requests that the Commission amend its regulations in 10 CFR Part 2 to require a separate operating license hearing for each power reactor unit at a nuclear plant site. In support of this request, the petitioner states, in part, that "The time lag between in-service dates for individual reactors at multi-reactor nuclear plants has been increasing for many years, since, long before Three Mile Island 2's 1979 accident. For 4-unit plants, as much as 9 years or more may now be scheduled to elapse between the first and last unit coming on-line. For 2-unit plants, the second unit is often being scheduled for service 2 or 3 or more years after the first."

"This time lag is partly induced by construction difficulties, partly by additional safety considerations, and considerably by reduced needs for new electrical generating plants, among other factors. However, these time lags provide the opportunity for, and indeed necessitate, more thorough NRC review of the issues involved in licensing a nuclear power unit, with respect to second, third, fourth and even later units of a single plant. For one thing, virtually the entire data base on which most nuclear units presently under construction were approved is out of date and becoming more so daily. And * * * the NRC has not made the fundamental changes in its operations, rules, policies, and attitudes which would be minimally necessary to give reasonable assurances of nuclear safety in the future. Without nuclear safety there can be no viable nuclear industry. Therefore, thorough review of the sort proposed in this rule change is in the interest of the nuclear industry, the NRC and the public."

PART 2—RULES FOR PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

The petitioner requests that the Commission propose amendments to 10 CFR Part 2 as follows:

§ 2.101 [Amended]

"Add to 10 CFR 2.101 a new paragraph (a)(4) as follows:[1]

(a) * * *

(4) For nuclear power reactors, no single operating license hearing shall authorize the operation of more than one power reactor. Instead, a separate operating license hearing including the ability to re-open or introduce any issue including safety, need for power, cost-effectiveness compared to alternatives to meet or eliminate the energy output proposed from the unit, evacuation planning, waste disposal, need for base load power, and other relevant issues, shall be held for each nuclear power reactor.

* * * * *

Add to 10 CFR 2, Subpart D, a new § 2.408 as follows:

§ 2.408 Separate operating license hearing required for each power reactor.

For each power reactor at a given site, whether of the same design as others built on that site, or not, a separate operating license hearing shall be held before any operating license for that reactor shall issue. Such separate hearing shall include a *de novo* examination and determination of all relevant safety issues, including unresolved safety problems whether so designated by the Commission or not, especially those difficulties which have occurred in operating plants or have been shown by re-analysis or experiment to be more serious risks than formerly believed. Such separate hearing shall also include a *de novo* determination of the need for power, if any, from the reactor, and a *de novo* determination of the cost-effectiveness of operating the reactor as compared to alternatives, taking fully into account for the reactor and unit, all fixed capital charges, fuel and operating and maintenance costs, including insurance and any tax consequences or benefits of not operating the reactor, or scrapping it or any of its associated systems. Alternatives considered shall include, but not be limited to, any of the following in any combinations: conservation, load management, increased energy efficiency, substitutions of alternative sources of energy and/or efficiency in end-uses of energy, co-generation, development of hydroelectric energy from existing dams, reducing energy waste, avoiding the need for energy use through any measures (including insulation, shading, reflective coatings and air spaces, thermal storage, use of the latent heat of the earth), use of wastes or biomass as fuels, competing sources of electricity including centralized or dispersed solar photovoltaic energy, wind power, more efficient motors or appliances, increased production from existing power plants with lower capital costs, increased electricity production from any other new or existing sources, geothermal energy, wave energy, ocean thermal energy, substitution of solar energy with or without thermal storage for end uses of electricity for heating and/or cooling, waste heat recovery, and microhydroelectic power production. Such separate hearing shall also consider and determine whether the Nuclear Regulatory Commission has in place adequate regulations and sufficient personnel to ensure the safe operation of the unit for its planned operating life, and shall consider the range of probable costs and uncertainties in costs of waste disposal and decommissioning of the unit, in making its cost-effectiveness determination for the nuclear unit compared to alternatives. In the event of conflict between this section and any other part of Chapter 10 of the Code of Federal Regulations or any other regulation, this subsection shall be controlling."

Dated at Washington, DC, this 26th day of January 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-2382 Filed 1-28-82; 8:45 am]

BILLING CODE 7590-01-M

[1] Editorial Note: A subparagraph (4) currently exists in § 2.101(a).

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10 CFR Part 35

[Docket No. PRM-35-2]

Receipt of Petition for Rulemaking From the American Association of Physicists in Medicine

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of a petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is publishing a petition for rulemaking submitted by the American Association of Physicists in Medicine. The petition requests an interval longer than the two years between required calibrations of a dosimetry system used to perform full calibration measurements on a teletherapy unit—as long as suitable dosimetry system verification checks are carried out. The suggested amendments are intended to reduce the current six month waiting period for instrument calibration without adversely affecting dosimetry system reliability.

DATE: Submit comments by March 30, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC between 8:15 a.m. and 5:00 p.m.

For a copy of the petition write to: The Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Inspect and copy comments received on the petition at: The NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION:

J. M. Felton, Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7211.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) received a petition for rulemaking from the American Association of Physicists in Medicine (AAPM). The petition has been assigned Docket No. PRM-35-2. The petition suggests amendments to §§ 35.23(a) and 35.25(a) that would permit an interval longer than two years between required calibrations of a dosimetry system that is used to perform calibration measurements of a teletherapy unit—as long as suitable dosimetry verification checks are carried out.

As an interim measure, the petition also recommends that a variance be granted to licensed teletherapy users who are unable to have instruments calibrated within the required period.

The current text of § 35.23(a) reads: "Full calibration measurements required by § 35.21 shall be performed using a dosimetry system that has been calibrated by the National Bureau of Standards or by a Regional Calibration Laboratory accredited by the American Association of Physicists in Medicine. The dosimetry system shall have been calibrated within the previous two years

and after any servicing that may have affected system calibration."

The petitioner contends that: "The National Bureau of Standards (NBS) and the accredited Regional Calibration Laboratories (RGLs) are able to calibrate a limited number of instruments each year. With the advent of the referenced (§ 35.21) NRC regulation the waiting period for instrument calibration has increased and at present is about six months. It is probable that the waiting period will become longer as more instruments are due for calibrations."

To alleviate this situation, the petitioner recommends that the NRC revise 10 CFR 35.23(a) and 35.25(a) to permit a longer interval between required calibrations. In addition, the petitioner recommends, as an interim measure while the suggested amendments are under consideration, that the NRC grant a variance to a licensed teletherapy user who is not able to have instruments calibrated within the two year period. The suggested revisions to §§ 35.23(a) and 35.25(a) read as follows:

"§ 35.23 Requirement to calibrate instruments used for full calibration and spot-check measurement.

"(a)(1) Full calibration measurements required by § 35.21 shall be performed using a dosimetry system that has been calibrated by the National Bureau of Standards (NBS) or by a Regional Calibration Laboratory (RCL) accredited by the American Association of Physicists in Medicine (AAPM). The dosimetry system shall have been calibrated within the previous two years and after any servicing that may have affected system calibration. As an alternative, the dosimetry system shall be calibrated every four years; an independent cobalt-60 intercomparison shall be made midway (± 6 months) in the period; and suitable records shall be kept to provide constancy of the dosimetry system.

"(2) Independent cobalt-60 intercomparisons shall be sponsored by a professional organization, such as a chapter of the AAPM, the Radiological Physics Center (RPC), or a regional Center for Radiological Physics (CRP). Such intercomparisons shall *not* provide a calibration factor for the dosimetry system but will provide a check to determine that the existing calibration factor is valid. If such a dosimetry system intercomparison demonstrates that the calibration factor appears to have changed by more than 2%, then the dosimetry system shall be recalibrated at the NBS or an RCL.

"(3) Consistence of dosimetry system performance shall be verified before and after calibration by the NBS or an RCL, before and after a dosimetry system intercomparison, and at least quarterly thereafter, or prior to the use of a dosimetry system if the interval is greater. A cobalt-60 teletherapy source, with a jig for positive positioning of the ionization chamber, or a shielded Strontium-90 or other long-lived radioactive source, may be used for such constancy checks.[1] The time of irradiation shall be long compared to the time required to start and stop an irradiation. Corrections shall be made for radioactive source decay, and ambient temperature and pressure; attention shall be paid to possible errors in source or chamber positioning, collimator geometry, and timers. For field instruments changes or fluctuations of ± 1% are normal."

* * * * *

"§ 35.25 Records.

* * * * *

"(a) Records of (1) full calibration measurements under § 35.21 and (2) dosimetry system intercomparisons using Co-60, and (3) constancy checks of the dosimetry system used to make these measurements under § 35.23, shall be preserved for at least five years after completion of the full calibration."

* * * * *

The petitioner presents the following rationale for these suggested amendments.

"The AAPM considers it essential to maintain high standards of calibration for dosimetry systems used in the calibration of teletherapy units. Since the capacity of the NBS and RCLs is limited, an alternative method has been suggested to maintain these high standards while reducing the load on the calibration laboratories. Members of the AAPM are almost invariably the physicists responsible for the calibration of teletherapy units.

"The specific issues involved are the need to insure high accuracy in the calibration of teletherapy units and, within the capabilities of the calibration laboratories, to assure that dosimetry systems provide this accuracy. The recommendations made above are to change the requirement for dosimetry system calibrations every two years by the NBS or an RCL, to an alternative of requiring a calibration every four years with a dosimetry system intercomparison midway in the period and constancy checks throughout the four year period. The current rule could result in the use of a defective dosimetry system for a period as long as two years if, for example, it was damaged in transit or an error was made in the calibration. It is difficult, on short notice, to collect data showing that instrument calibrations stay constant over periods of many years. A number of qualified physicists who calibrate instruments and machines, believe that an initial calibration with proper constancy checks and dosimetry system intercomparisons would provide a better way to assure proper dosimetry system accuracy, than a new calibration every two years. Rationale for a longer period between calibrations was included in the IAEA 'Manual of Dosimetry in Radiotherapy' in 1970. A recent publication by Karzmark (1980) reported on constancy checks and intercomparisons for periods up to 14 years. For integrated dose data, the average standard deviation for six field instruments was 0.79%. Shalek et al (1981) reported on intercomparisons and calibrations with several different dosimetry systems. The results presented indicated that reliability of the dosimetry system or chamber calibration factor proved by the NBS or an RCL was unrelated to the number of years since calibration. The current rule is unduly burdensome because the calibration facilities of the NBS and RCLs are limited and at present there is a backlog of about six months."

The petitioner cites the following references.

"Massey, John B., IAEA Technical Report No. 110, "Manual of Dosimetry in Radiotherapy", p. 26, 1970.

Karzmark, C. J., "Concerning radiotherapy standard dose meter calibration" Med. Phys. *7*, 574–5, 1980.

Shalek, R. J., Humphries, L. J. and Hanson, W. F., "The American Association of Physicists in Medicine Regional Calibration Laboratory System", Proceedings of a Meeting on Traceability for Ionizing Radiation Measurements, NBS Special Publication 609, in press, 1981."

The petitioner requested that the suggested amendments be handled in accordance with the expedited procedure for handling certain petitions for rulemaking set out in 10 CFR 2.802(e), (46 FR 35486, July 9, 1981). Although NRC is announcing the receipt of the petition and requesting public comment on it in accordance with the standard procedures set out in 10 CFR 2.802(e), NRC intends to respond promptly to the petition. The NRC is currently developing a proposed revision to Part 35 in its entirety for publication in Spring, 1982. The NRC intends to

[1] A compact constancy checker shall *not* be used for dosimetry system intercomparisons.

investigate possible alternatives to the petitioner's suggested solution to the problem and analyze public comment received in response to this notice of petition for rulemaking. If the NRC then determines that an amendment is necessary, the proposed change will be included in the proposed revision of Part 35. Meanwhile, any licensee who anticipates difficulty in having instruments calibrated within the required two year period may request a specific exemption from this requirement under the provision of 10 CFR 30.11(a).

A request for an exemption should be addressed to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Washington, DC, this 25th day of January 1982.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 82-2383 Filed 1-28-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 1

[Docket No. RM82-12]

Rules Implementing Equal Access to Justice Act

Issued: January 19, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its rules of practice and procedure by adding rules which implement the Equal Access to Justice Act. The Act provides for the award of fees and expenses to eligible parties who prevail over a federal agency in certain administrative proceedings and requires agencies to establish procedures for making such awards. This proposal would provide a procedure to be used in processing petitions for fees and expenses.

DATE: Written comments (send 14 copies) must be received by February 26, 1982.

ADDRESS: Comments must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All comments should refer to Docket No. RM82-12.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

The Federal Energy Regulatory Commission (Commission) is proposing to amend its rules of practice and procedure 18 CFR Part 1 to implement the Equal Access to Justice Act (Act) (Pub. L. No. 96-481, Title II, 94 Stat. 2325 (1980), 5 U.S.C. 504 (1981)). The Act provides for the award of fees and expenses to eligible parties who prevail over a federal agency in certain administrative proceedings and requires agencies to establish procedures for making such awards. The Commission proposes to establish these procedures in a new section of its regulations, § 1.44.

A. Background

The purpose of the Act is to eliminate the disincentive that individuals and small businesses face in defending against government action because of the cost of vindicating their rights in both administrative and judicial forums. To accomplish this objective, the Act provides that a federal agency must award fees and expenses to an eligible party who prevails over the agency in an "adversary adjudication" before the Commission, unless (1) the agency's position was substantially justified or (2) special circumstances make the grant of an award unjust (5 U.S.C 504(a)(1)).

The Act defines "adversary adjudication" as a proceeding under section 554 of the Administrative Procedure Act (5 U.S.C. 554), in which the position of the United States is represented by counsel or otherwise. Congress, however, specifically excluded from coverage of the Act adjudications to establish or fix a rate or grant or renew a license, 5 U.S.C. 504(b)(1)(C). The Act applies to adversary adjudications pending between October 1, 1981, the effective date of the Act, and October 1, 1984, the expiration date of the Act. Eligibility for awards under the Act depends upon the net worth and the number of employees of the party and upon whether the party prevailed in the adversary adjudication.

The Act requires federal agencies to consult with the the Chairman of the Administrative Conference of the United States (the Conference) before establishing procedures to implement the Act. To provide guidance to agencies, the Conference issued model regulations (46 FR 15895, March 10, 1981; 46 FR 32900, June 25, 1981). In meeting the consultation obligation, the Commission designated a representative who participated in meetings which culminated in the model rules.

In addition, the Commission will give serious consideration to any comments submitted by the Conference to this proposed rule.

B. Discussion

The Commission has relief heavily on the model rules in formulating this proposal. However, the Commission's proposed rule differs from the model rules in two ways, the first relating to format, and the second, to certain substantive provisions. With respect to format, the Commission has incorporated the rules to implement the Act into its existing rules of practice and procedure. This differs from the model rules which envision establishment of a new part in the regulations for these rules. The Commission believes that incorporation is preferable, because many procedural aspects of the rules to implement the Act currently exist in the Commission's rules of practice and procedure. Duplication of these rules would invite confusion, possible inconsistency, and would unnecessarily increase the volume of Commission regulations. Therefore, the Commission proposes to add a new section, 1.44, to establish additional provisions unique to implementation of the Equal Access to Justice Act.

With respect to substance, the proposed rule largely adopts the recommendations of the Conference, but differs from the model rule in a few ways. With regard to some of those differences, the Commission requests comments, as discussed below. First, the proposed rules does not implement the model rule recommendation relating to fees for expert witnesses. The Act limits an award of attorneys fees to $75.00 an hour and limits fees for expert witnesses to the "highest rate of compensation for expert witnesses paid by the agency involved * * *." The Conference recommends that an agency specify the dollar amount which is the highest the agency pays its own expert witnesses. The Commission proposes not to follow this recommendation because it has not imposed any limitation on what it could pay its expert witnesses. Indeed, when the Commission has used outside expert witnesses it has paid them considerably more than the $24.09 an hour which the Conference states is the fee paid by other agencies. Comments are solicited on how the Commission should implement the Act's limitation on the hourly amount paid to expert witnesses.

Second, the Commission has not included the model rule relating to burden of proof. The Act does not

clearly allocate the burden of proof. The Conference Report states that "(a)fter a prevailing party has submitted an application for an award, the burden of proving that a fee award should not be made rests with the agency." H.R. Rep. 96–1434, 96th Cong., 2d Sess. 22 (1980). The Commission proposes to leave to the administrative law judge deciding the case, the resolution of the issue of the allocation of the burden of proof.

Finally, while the Commission has adopted the Conference's recommendation that a party may seek an award for fees and expenses only if the adjudication on which the claim is based was an adjudication required to be conducted under 5 U.S.C. 554, the Commission has not specifically enumerated the proceedings which are covered by the definition of "adversary adjudication," nor has it proposed to designate whether a proceeding is included within the definition of "adversary adjudication" at the time that it sets a matter for hearing. The Act may apply to only a few proceedings before the Commission, as, for example, proceediings under the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 796(20). The vast majority of the Commission's work, adjudications to establish a rate under section 4 of the Natural Gas Act (15 U.S.C. 717c), or section 20 of the Federal Power Act (16 U.S.C. 813), to grant a certificate to a pipeline under section 7 of the Natural Gas Act (15 U.S.C. 717f), and to issue a license or permit under sections 5 and 6 of the Federal Power Act (16 U.S.C. 798 and 799), are specifically exempted from claims for fees and expenses under the Act. The Commission has not determined the extent to which the other various proceedings conducted by the Commission are adversary adjudications. Comments are solicited on which proceedings conducted by the Commission are included in the definition of "adversary adjudication."

C. Description of Rule

Two changes would be made to the Commission's regulations by this proposal. First, a new paragraph (b)(11) would be added to § 1.27 of the Commission's rules of practice and procedure, which delegates to presiding officers the authority to make initial decisions on petitions for an award of fees and expenses. Second, a new § 1.44 would be added which contains provisions necessary to implement the Act.

New § 1.27(b)(11) would delegate to presiding officers the authority to make initial decisions on petitions under the Equal Access to Justice Act. In addition, Paragraph (i) of § 1.44 would give presiding officers the authority to hold such proceedings as may be necessary to arrive at a decision on a petition, including holding an evidentiary hearing. In Commission proceedings the presiding officer is rarely given the authority to set a petition for hearing. The decisions to set a matter for an evidentiary hearing is usually made by the Commission. However, Commission action is unnecessary to initiate the processing of a petition for an award of fees and expenses because the officer who presided at the adjudication which is the basis for the petition will be in a better position to make preliminary decisions on the petition.

As proposed, § 1.44 has eleven paragraphs which contain both the substantive provisions governing awards and the procedural provisions governing the processing of petitions for awards.

Paragraph (a) states that § 1.44 applies to proceedings for an award of fees and expenses under the Act.

Paragraph (b) defines the terms "adversary adjudication," "prevailing party," and "final agency action," and incorporates by reference the definitions used in the Act.

Paragraph (c) provides cross-references to the sections of the Rules of Practice and Procedure which are applicable to proceedings under the Act.

Paragraph (d) requires a petitioner to file a petition withih 30 days after final agency action has been reached in the underlying proceeding. Petitions for an award of fees and expenses should not be decided until there can be no change in the merits of the underlying proceeding.

Paragraph (e) prescribes the contents of a petition for fees and expenses. The contents include a net worth exhibit and documentation of fees and expenses.

Paragraph (f) requires the Secretary of the Commission to assign a new docket number to a petition and to forward the petition to the Chief Administrative Law Judge, who will, if possible, assign the petition to the same judge who presided at the underlying proceeding. A new docket number is necessary so that the petitioner may avoid the necessity of serving the petition on everyone who was a party to the underlying proceeding.

Paragraph (g) identifies those eligible for awards under the Act. Subparagraph (1) tracks the Act's eligibility requirements by limiting eligibility based on individual or organizational net worth or numbers of employees. Subparagraph (2) follows the model rules provision that distinguishes, for the purposes of determining net worth, between petitioners who are before the Commission to represent their personal interests and those who are here to represent their business interests. Subparagraph (3) defines employees in the same manner as the model rules.

Subparagraph (4) provides that in certain circumstances the net worth and number of employees of the party seeking an award of fees would be aggregated with its affiliates to determine eligibility. Subparagraph (5) provides that petitioners will not be eligible when they are participating primarily on behalf of ineligible entities. In part this rule deals with the appropriate characterization of trade associations under the Act. Trade associations may be involved in litigation on their own account (*e.g.*, as employers) or in the interests of their membership. When a proceeding involves a trade association independent of its membership, the association's eligibility should be determined like any other petitioner's; when an association is primarily representing the interests of its members, the Commission would have to consider whether it should be deemed the alter ego of those members. One factor, for example, that the Commission might consider is whether the association is financing its participation in the litigation out of its general budget or through special assessments against members that have agreed to participate. In the latter situation, the Commission might look closely at whether the eligibility of the particular participating members might be attributed to the association.

Paragraph (h) prescribes the fees and expenses awardable under the Act, including the maximum hourly rates allowed by the Act. Subparagraph (3) lists certain factors to be considered in determining reasonableness of the fees requested, including a reference to fully allocated cost for in-house attorneys. Subparagraph (5) states that the Commission is not liable for an award if its position was "substantially justified" or if "special circumstances" make an award unjust. Subparagraph (6) repeats the statutory provision which requires that an award may be reduced if the petitioner unreasonably protracted the underlying proceeding.

Paragraph (i) gives the administrative law judge who presides over an Equal Access to Justice petition the authority both to require parties to submit such information and to hold such additional proceedings as may be necessary to reach a decision.

Paragraph (j) prescribes the procedures for payment of an award.

The Act provides that a prevailing party may be paid either by the agency, if Congress has appropriated funds for this purpose, or from a fund maintained for the payment of judgments against the United States, if funds have been so appropriated.

D. Certification of No Significant Impact on Small Entities

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission hereby certifies that these rules will not have a significant economic impact upon a substantial number of small entities. The Equal Access to Justice Act itself may have such an impact, since it applies to individuals and small business entities. It represents a Congressional determination that small entities should not bear the burden of litigation where the Government's position is not substantially justified. These rules simply implement the Act, carrying out Congressional intention, and do not, by themselves, impose significant economic burdens or benefits.

E. Comment Procedure

We invite interested members of the public to submit comments or suggestions regarding these proposed rules. The Commission and its staff will evaluate any information received from interested persons and will consider appropriate revisions to these rules as a result of comments received. An original and 14 copies should be filed by February 26, 1982, and submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. All comments should refer to Docket No. RM82-12 on the cover page. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426, during regular business hours.

(Administrative Procedure Act, (5 U.S.C. 551-557); Department of Energy Organization Act, (42 U.S.C. 7101 et seq.))

In consideration of the foregoing, the Commission proposes to amend Part 1, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations, as provided below.

By direction of the Commission.

Lois D. Cashell,
Acting Secretary.

PART 1—RULES OF PRACTICE AND PROCEDURE

1. Part 1 is amended in the table of contents by adding a new section number and title between §§ 1.43 and 1.51 to read as follows:

Sec.

* * * * *

1.44 Proceedings for the award of fees and expenses under the Equal Access to Justice Act.

* * * * *

2. Section 1.27 is amended by redesignating paragraph (b)(11) as (b)(12) and inserting a new paragraph (b)(11) to read as follows:

§ 1.27 Presiding officer.

* * * * *

(b) *Authority delegated.* * * *

(11) To conduct and dispose of proceedings under § 1.44 for an award of fees and expenses under the Equal Access to Justice Act (5 U.S.C. 504).

* * * * *

3. Part 1 is amended by inserting a new section between §§ 1.43 and 1.51 to read as follows:

§ 1.44 Proceedings for the award of fees and expenses under the Equal Access to Justice Act.

(a) *Applicability.* This section applies to proceedings for the award of fees and expenses to a prevailing party in an adversary adjudication conducted by the Commission.

(b) *Definitions.* (1) "Adversary adjudication" means an adjudication, which is a final agency action, in a proceeding or part of a proceeding, pending before the Commission at any time between October 1, 1981 and September 30, 1984 (including any proceedings begun before October 1, 1981, if final action has not been taken before that date, and proceedings pending on September 30, 1984 regardless of when they were initiated or when final action occurs) which is required to be conducted under 5 U.S.C. 554 and in which the United States is represented by counsel or otherwise. It excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license (as defined in 5 U.S.C. 551(8)).

(2) "Pevailing party" means a party, as defined in the Equal Access to Justice Act, 5 U.S.C. 504, that prevails over an agency in an adversary adjudication conducted by the Commission.

(3) "Final agency action" means agency action which is final for purposes of seeking judicial review under the appropriate organic statute.

(4) All other terms shall have the same meaning as they have under the Equal Access to Justice Act (5 U.S.C. 504).

(c) *Applicable rules of practice and procedure.* Except as otherwise specifically provided in this section, the following provisions of this part shall apply to proceedings under this section:

(1)-(3) (Reserved)

(4) Section 1.4—Appearances and practice before the Commission;

(5) Section 1.7—Petitions;

(6) Section 1.8—Intervention;

(7) Section 1.9—Answers;

(8) Section 1.10—Protests;

(9) Section 1.11—Amendments and withdrawals of pleadings.

(10) Section 1.12—Motions;

(11) Section 1.13—Time, extensions of time, issuance of orders;

(12) Section 1.14—Filings; docket; hearing calendar;

(13) Section 1.15—Formal requirements as to pleadings, documents and other papers filed in proceedings;

(14) Section 1.16—Subscription and verification;

(15) Section 1.17—Service;

(16) Section 1.18—Conferences; offers of settlement;

(17) Section 1.19—Notices;

(18) Section 1.20(b)-(1)—Hearings;

(19) Section 1.21—Copies of transcripts;

(20) Section 1.22—Witnesses;

(21) Section 1.23—Subpoenas;

(22) Section 1.24—Depositions;

(23) Section 1.25—Stipulations;

(24) Section 1.26—Evidence;

(25) Section 1.27—Presiding officers;

(26) Section 1.28—Interlocutory appeals to Commission from ruling of presiding officers;

(27) Section 1.29—Briefs and oral arguments before presiding officers and proposed findings and orders;

(28) Section 1.30—Decisions;

(29) Section 1.31—Exceptions to intermediate decisions; briefs; briefs and oral arguments before the Commission;

(30) Section 1.32—Shortened procedures;

(31) Section 1.33—Reopening proceedings;

(32) Section 1.36—Public information and requests; and

(33) Section 1.51—Certificate of service.

(d) *Commencement of a proceeding.* A prevailing party seeking an award of fees and expenses shall file a petition for an award of fees and expenses not later than 30 days after final agency action in an adversary adjudication.

(e) *Contents of petition.* A petition for an award of fees and expenses must:

(1) Identify the proceeding which resulted in the adversary adjudication;

(2) Identify the position of the Commission in the proceeding that the petitioner alleges was not substantially justified;

(3) Include an exhibit showing either the net worth of the petitioner when the proceeding was initiated or that the petitioner is exempt from the net worth

requirement under paragraph (g)(1)(iii) or (iv) of this section. The exhibit may be in any form convenient to the petitioner that provides full disclosure of the petitioner's net worth or the grounds for the claimed exemption and is sufficient to determine whether the petitioner qualifies under the standards in paragraph (g) of this section. If the petitioner is not an individual, the petition shall state the number of employees of the petitioner's organization or business.

(4) Include full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement must be submitted for each professional firm or individual whose services are covered by the petition, showing the hours spent in connection with the underlying adversary adjudication, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the petitioner or by any other person or entity for the services provided.

(f) *The Duties of the Secretary and Chief Administrative Law Judge.* (1) The Secretary shall assign a new docket number to the petition and shall forward the petition to the Office of the Chief Administrative Law Judge.

(2) The Chief Administrative Law Judge shall assign the petition to the administrative law judge who presided at the proceeding which resulted in the adversary adjudication, unless such administrative law judge is unavailable in which case the petition shall be assigned to another administrative law judge.

(g) *Eligibility.* (1) A person is eligible for an award of fees and expenses from the Commission if that person was a prevailing party in an adversary adjudication conducted by the Commission and, on the date the adversary adjudication was initiated, was one of the following:

(i) An individual with a net worth of not more than $1 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business property, and not more than 500 employees;

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], having not more than 500 employees;

(iv) A cooperative association as defined in section 5(a) of the Agricultural Marketing Act (12 U.S.C. 1141(a)) having not more than 500 employees; or

(v) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(2) A petitioner who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an incorporated business" if the issues on which the petitioner prevails are related primarily to personal interests rather than to business interests.

(3) The employees of a petitioner include all persons who regularly perform services for the petitioner for remuneration, under the petitioner's direction and control. Part-time employees shall be included on a proportional basis.

(4) The net worth and number of employees of the petitioner and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the petitioner, or any corporation or other entity of which the petitioner directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this section, unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the petitioner other than those described in this paragraph constitute special circumstances that would make an award unjust.

(5) A petitioner who participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is ineligible for an award.

(h) *Allowable fees and expenses.* (1) A party who prevails over the Commission in an adversary adjudication conducted by the Commission shall be awarded the reasonable fees and expenses of attorneys and their agents, and expert witnesses.

(2) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the agency pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the presiding officer shall consider the following:

(i) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if the attorney is an employee of the petitioner, the fully allocated cost of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(iii) The time actually spent in the representation of the petitioner;

(iv) The time reasonably spent in the light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the petitioner's case.

(5) The award may be denied:

(i) If the position of the Commission in the proceeding which resulted in the adversary adjudication was substantially justified in that it was reasonable in law and in fact; or

(ii) If special circumstances make the award sought unjust.

(6) An award may be reduced or denied if the prevailing party unduly or unreasonably protracted the proceeding which resulted in the adversary adjudication.

(i) *Powers of Administrative Law Judge.* The administrative law judge may:

(A) Order additional pleadings from any participant in the proceeding; and

(B) Conduct the proceeding as he deems appropriate, including setting the proceeding for an evidentiary hearing or calling for oral argument and ruling on motions.

(j) *Payment of award.* A petitioner seeking payment of an award from the Commission shall submit to the Office of the Secretary a copy of the Commission's final decision granting the award, accompained by a statement that the petitioner will not seek review of the decision in the United States courts. If there are funds appropriated for such purpose, the Commission will pay the

amount awarded to the petitioner within 60 days.

[FR Doc. 82-2366 Filed 1-28-82; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-011]

Occupational Noise Exposure; Hearing Conservation Amendment; Public Hearing

AGENCY: Occupational Safety and Health Adminitration, Department of Labor.

ACTION: Notice of informal public hearing.

SUMMARY: This notice schedules an informal public hearing on a number of changes suggested in comments on the hearing conservation amendment to the occupational noise exposure standard CFR 1910.95 (c)–(s)) which was published in the **Federal Register** on August 21, 1981 (46 FR 42622 and 42639.)

DATES: The informal public hearing will begin on March 23, 1982 at 9:30 a.m. All notices of intention to appear at the public hearing and all evidence relating to the hearing issues must be received by March 5, 1982.

ADDRESSES: The informal hearing will be held in the Auditorium, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Send notices of intention to appear and testimony and evidence which will be introduced into the hearing record to: Occupational Safety and Health Administration, Division of Consumer Affairs, Room N–3635, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. J. Thomas Hall, Division of Consumer Affairs, Room N–3635, U.S. Department of Labor, Washington, D.C. 20210 (202–523–8024).

SUPPLEMENTARY INFORMATION: On January 16, 1981, OSHA published an amendment to its occupational noise exposure standard (46 FR 4078) requiring hearing conservation programs for all employees whose noise exposures equal or exceed an 8 hour time-weighted average sound level (TWA) of 85 decibels (dB). The amendment was to become effective on April 15, 1981, with various provisions being phased in over a two year period. OSHA deferred the effective date of the amendment until August 22, 1981 in order to give the Agency time to evaluate numerous requests for clarification and petitions for administrative stay of the hearing conservation amendment.

On August 21, 1981, OSHA lifted the administrative stay of various key provisions of the hearing conservation amendment, invited public comment and the submittal of new information on the merits of other selected provisions of the amendment and issued a number of clarifications of the amendment in response to questions from the public (see 46 FR 42622). OSHA subsequently received extremely voluminous submissions containing comments and evidence in response to its August 21 **Federal Register** notice from approximately 150 interested persons. In general, most persons thought that the stayed provisions (listed below) either presented feasibility problems or did not represent the most cost effective way of protecting employees' hearing. Many thought that the provisions of the hearing conservation amendment which had been allowed to go into effect constituted a coherent hearing conservation program which would meet the goal of protecting employee hearing. On the other hand, several labor groups objected to the stays of the various provisions, feeling that the stays had an adverse effect on the enforceability of the standard. Several unions requested that a hearing be held on the suggested changes.

In response to the objections received, OSHA invites testimony and evidence on the issues raised in the August 21 **Federal Register** document. Your attention is directed to the paragraphs listed below which are affected in whole or in part by the existing stay. Issues at the hearing will include whether it is necessary to include specific requirements for the following: Initial determinations, personal monitoring, worker notification, periodic re-monitoring, equipment calibration and measuring equipment specification, the fourteen hour quiet rule before baseline audiograms, the use of hearing protectors to provide effective quiet before baseline audiograms, a definition of significant threshold shift, re-testing employees whose audiograms show a significant threshold shift, the determination of work-relatedness of worker hearing loss, how soon employees must be audiometrically tested, and warning signs. In addition, it has been suggested that oil and gas drilling and servicing operations be exempted from the requirements of the hearing conservation amendment (§ 1910.95 (c)–(s)) on the basis of the difficulty in complying with the monitoring and audiometric test provisions of the amendment due to the tremendous variation in working conditions, high mobility of drilling rig operations, as well as the extremely high turnover rate among employees which in some cases approaches 300 percent. It is felt that the requirements for establishing baseline audiograms for such a transient population would be extremely burdensome and of limited value in accomplishing the goals of the amendment..

Provisions Stayed

Paragraph (d).
Paragraph (e), except for part of (e)(1).
Paragraph (f).
Paragraph (g), except for part of (g)(2)(ii)(b).
Paragraph (h).
Paragraph (i), except for part of (i)(1).
Part of paragraph (j)(5)(i).
Paragraph (j)(5)(ii)(a).
Paragraph (j)(5)(ii)(b).
Part of paragraph (j)(7)(i).
Part of paragraph (j)(7)(ii).
Part of paragraph (j)(7)(iii).
Paragraph (j)(7)(iv).
Part of paragraph (j)(8).
Paragraph (j)(8)(iii) and (iv).
Part of paragraph (j)(8)(iv)(a) and (b).
Paragraph (j)(8)(iv)(d).
Paragraph (j)(9).
Paragraph (j)(10).
Part of paragraph (l)(2)(i).
Paragraph (n)(3)(i), (iii), (iv) and (v).
Paragraph (p).
Part of paragraph (q)(1)(i).
Paragraph (q)(1)(ii).
Part of paragraph (q)(2)(ii)(c).
Paragraph (q)(2)(ii)(d).
Paragraph (q)(2)(ii)(g).
Paragraph (q)(3)(ii).
Paragraph (q)(4).
Part of paragraph (q)(5)(ii).
Part of paragraph (q)(5)(iii) and (iv).
Part of paragraph (r)(2).
Part of paragraph (s)(2).
Paragraph (s)(4).
Paragraph (s)(5).
Appendix B is stayed in its entirety.
Part of appendix D including Table D–1.
Appendix F.
Part of Appendix G.

Public Participation in Hearing

Under section 6(b)(3) of the Act and 29 CFR Part 1911, an opportunity to submit oral testimony concerning the hearing issues will be provided at an informal hearing scheduled to begin at 9:30 a.m. on March 23, 1982, in the Auditorium, New Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice of Intention to Appear

Persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file a notice of intention to appear,

which must be received by March 5, 1982. Notices of intention to appear are to be sent to Mr. J. Thomas Hall, OSHA Division of Consumer Affairs, Room N–3635, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 523–8024.

The notices of intention to appear, which will be available for inspection and copying at the Docket Office, Room S–6212, Department of Labor must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence to be adduced in support of the position.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 15 minutes for presentation at the hearing or who will submit documentary evidence, must provide in quadruplicate the complete text of its testimony, including all documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material will be available for inspection and copying in the Docket Office Room S–6212, Department of Labor. This material must be received by March 5, 1982. Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with the above requirement may be limited to a 15 minute presentation and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge presiding at the hearing.

Conduct of the Hearings

The hearing will commence at 9:30 a.m. on March 23, 1982, with the resolution of any outstanding procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion to question and permit questioning of any witness; and
6. In the Judge's discretion to keep the record open for a reasonable period of time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceeding.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. Those portions of the hearing conservation amendment presently stayed will be reviewed in light of all testimony and written submissions received as part of the record. A decision as to whether the provisions should be modified, revoked or allowed to go into effect will be made based on the entire record in this proceeding.

This hearing notice was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Signed at Washington, D.C. this 22nd day of January, 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82–2202 Filed 1–28–82; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

[SPA–32]

Public Hearing and Public Comment Period on the Resubmitted Pennsylvania Permanent Regulatory Program

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

ACTION: Proposed rule: Notice of receipt of permanent program resubmission; schedule for public hearing and public comment period.

SUMMARY: OSM is announcing procedures for the public comment period and hearing on the substantive adequacy of the proposed Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) which has been resubmitted by the Commonwealth and which was not previously approved by the Secretary of the Interior.

This notice sets forth the times and locations that the Pennsylvania program is available for public inspection, the date when and location where OSM will hold a public hearing on the resubmission, the comment period during which interested persons may submit written comments and data on the proposed program and other information relevant to public participation during the comment period and public hearing.

DATES: A public hearing to review the substance of the Pennsylvania program will be held at 5:30 p.m. on February 25, 1982, at the address listed below.

Comments from members of the public may be submitted at any time prior to 4:00 p.m. on March 3, 1982. Comments must be received by this time in order to be considered in the Secretary's decision on the proposed Pennsylvania program.

ADDRESSES: The public hearing will be held at the Forum Auditorium, Corner of Commonwealth Avenue and Walnut Street, Harrisburg, Pennsylvania. Written comments should be sent to: Office of Surface Mining, Attention: Pennsylvania Administrative Record, 603 Morris Street, Charleston, West Virginia 25301, or may be hand delivered to the above address.

Copies of the full text of the proposed program, a listing of scheduled public meetings and copies of all written comments are available for review and copying at the OSM Region I Office and the office of the state regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4 p.m., excluding holidays.

Office of Surface Mining, Region I, 603 Morris Street, Charleston, West Virginia 25301, Phone: (304) 342–8125

Department of Environmental Resources, Fulton Bank Building, 10th Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120, Phone: (717) 787–4686

FOR FURTHER INFORMATION CONTACT: Christine Struminski, Assistant Regional Director, Division of State and Federal Programs, Office of Surface Mining

Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Phone: (304) 342–8125.

SUPPLEMENTARY INFORMATION: Copies of the full text of the proposed program are also available for inspection during regular business hours at the following locations:

Office of Surface Mining, Johnstown District Office, Penn Traffic Bldg., 3rd Floor, 319 Washington Street, Johnstown, PA 15901, Phone: (814) 533–4223

Office of Surface Mining, Wilkes Barre District Office, 20 N. Pennsylvania Avenue, Room 3107, Wilkes Barre, PA 18701, Phone: (717) 823–0563

Dept. of Environmental Resources, Knox District Office, White Memorial Building, Knox, PA 16232, Phone: (814) 797–1191

Dept. of Environmental Resources, Greensburg District Office, Armbrust Professional Building, R.D. #2, Greensburg, PA 15601, Phone: (412) 925–8115

Office of Surface Mining, Clarion Field Office, Clarion State College, Clarion, PA 16214, Phone: (814) 226–4230

Office of Surface Mining, Dubois Field Office, 107 N. Brady Street, P.O. Box 647, DuBois, PA 15801, Phone: (814) 371–1240

Office of Surface Mining, Somerset Field Office, 651 S. Central Avenue, Morocco Building, Somerset, PA 15501, Phone: (814) 443–4844

Office of Surface Mining, Indiana Field Office, North 8th & Waters Streets, P.O. Box 185, Indiana, PA 15701, Phone: (412) 463–0216

Office of Surface Mining, Clearfield Field Office, Multi-Service Center, 950 Leonard Street, Clearfield, PA 16830, Phone: (814) 765–1503

Office of Surface Mining, Washington Field Office, 75 East Maiden Street, Washington, PA 15301, Phone: (412) 228–4710

Dept. of Environmental Resources, Pittsburgh Regional Office, The Kossman Building, 100 Forbes Avenue, Pittsburgh, PA 15222, Phone: (412) 565–5023

Dept. of Environmental Resources, Meadville Regional Office, 1012 Water Street, Meadville, PA 16335, Phone: (814) 724–8557

Dept. of Environmental Resources, Wernersville Regional Office, Wernersville State Hospital, Building 10, Wernersville, PA 19565, Phone: (215) 670–0301

Dept. of Environmental Resources, Williamsport Regional Office, 736 West Fourth Street, Williamsport, PA 17701, Phone: (717) 326–2681

Dept. of Environmental Resources, Norristown Regional Office, 1875 New Hope Street, Norristown, PA 19401, Phone: (215) 631–2400

Dept. of Environmental Resources, Harrisburg Regional Office, 407 S. Cameron Street, Harrisburg, PA 17101, Phone: (717) 783–2818

Dept. of Environmental Resources, Wilkes Barre/Kingston Regional Office, 90 E. Union Street, 2nd Floor, Wilkes Barre, PA 18701, Phone: (717) 826–2511

Dept. of Environmental Resources, Pottsville District Office, Motor Contracts Building, 108 S. Claude A. Lord Blvd., Pottsville, PA 17901, Phone: (717) 622–8181

On February 29, 1980, the Commonwealth of Pennsylvania submitted to OSM a proposed state regulatory program. Pursuant to the provisions of 30 CFR Part 732 (44 FR 15326–15328), the Regional Director published notification of receipt of the program submission in the March 11, 1980 **Federal Register** (45 FR 15575–15576) and in newspapers of general circulation within the Commonwealth. In accordance with that announcement, public comments were solicited and a public meeting was held on April 10, 1980, on the issue of the program's completeness.

On April 28, 1980, the Regional Director published notice in the **Federal Register** (45 FR 28165–28167) announcing that he had determined the program to be incomplete in accordance with SMCRA and the Federal regulations, as required by 30 CFR 731.14 and 732.11(b).

Public hearings on the initial Pennsylvania submission were held by the Regional Director on July 14 and 15, 1980, in Indiana and Harrisburg, Pennsylvania, respectively, after publishing notice on June 20, 1980, in the **Federal Register** (45 FR 41656–41659) and in newspapers of general circulation within the state. The public comment period on the initial submission ended July 21, 1980.

Throughout the period beginning with the submission of the program, OSM had frequent contact with the staff of the Pennsylvania Department of Environmental Resources. Minutes or notes of the discussions were placed in the Administrative Record and made available for public review and comment. The full chronology of the events leading to the Secretary's initial decision is contained in the **Federal Register** notice of the disapproval by the Secretary (45 FR 69970–69977), published on October 22, 1980.

That notice also contained the Secretary's findings, detailed explanations of those findings and the Secretary's decision, which disapproved the Pennsylvania program. Discussions after the initial decision between OSM and Pennsylvania relating to parts of the program that were disapproved are in the Administrative Record and will be subject to public comment during the public comment period announced herein. In accordance with the procedures set forth in 30 CFR 732.13(f), the Commonwealth of Pennsylvania had 60 days from the date of publication of the Secretary's initial decision in which to submit a revised program for consideration. On November 26, 1980 (In Re: Keystone Bituminous Coal vs. DER and Pennsylvania Coal Mining Association vs. DER), the Commonwealth Court of Pennslyvania enjoined the Pennsylvania Department of Environmental Resources from submitting a program to achieve primacy under SMCRA. On November 26, 1981, the injunction expired, and the state submitted its revised program for consideration on January 25, 1982.

In keeping with the public participation mandate of SMCRA, 30 CFR 732.13(f) requires a minimum of 30 days from public review and comment. The comment period announced today ends at 4:00 p.m., on March 3, 1982. During the comment period, the Secretary is soliciting comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies, as well as the general public.

Subsequent to the public hearing and review of all comments, the Regional Director will transmit to the Director a recommended decision along with a record composed of the hearing transcript, written presentations, exhibits, and copies of all public comments.

Upon receipt of the Regional Director's recommendation, the Director will consider all relevant information in the record and will recommend to the Secretary that the program as amended by the resubmission now be approved or disapproved or conditionally approved. The recommendation will specify the reasons for the decision. The procedures for the recommended decisions of the Regional Director and the Director to the Secretary are established in 30 CFR 732.12 (d) and (e) (44 FR 15326–15327). For further details, refer to the corresponding sections of the preamble (44 FR 14959–14961).

The Secretary's decision on the program as resubmitted will constitute the final decision by the Department. If the revised program is approved, the Commonwealth of Pennsylvania will have primary jurisdiction for the regulation of coal mining and

reclamation and coal exploration on non-federal lands in Pennsylvania. If the revised program is disapproved, a federal program will be implemented and OSM will have primary jurisdiction for the regulation of the above activities in Pennsylvania. To codify decisions on state programs, federal programs, and other matters affecting individual states, OSM has established Subchapter T of 30 CFR, Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Pennsylvania will be found in 30 CFR Part 938 after Pennsylvania's revised program has been approved or disapproved.

At the public hearing, parties wishing to comment on the proposed program will be asked to register for placement on the speaker's agenda. The hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and who wish to do so will be heard at the end of scheduled speakers. The hearing will end after all people in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard. Written comments, data, or other relevant information may be submitted to supplement, or in lieu of, an oral presentation at the hearing.

The Regional Director has prescribed the following hearing format and rules of procedure in accordance with 30 CFR 732.12(b)(1) (44 FR 15326):

1. The hearing shall be informal and follow legislative procedures.

2. Based on the number in attendance, each participant may be limited to 10 minutes.

3. Participants will be called in the order in which they register.

Public participation in the review of state programs is a vital component in fulfilling the purposes of SMCRA. On September 19, 1979, OSM published guidelines in the **Federal Register** (44 FR 54444–54445) governing contacts between the Department of the Interior and both state officials and members of the public. It is hoped that issuance of these quidelines will encourage full cooperation by all afffected persons with the procedures being implemented.

Interested members of the public are encouraged to read the Secretary's initial decision on the Pennsylvania program submission published in the **Federal Register** on October 22, 1980 (45 FR 69970–69977). That document contains detailed findings and explanations relating to the parts of the initial submission which were specifically disapproved. The Secretary will only consider comments relating to those portions previously disapproved or to any portions appearing in the program for the first time.

Set forth below is a summary of the contents of the resubmission:

1. State Surface Mining Laws and Regulations.

2. Other Related State Laws and Regulations.

3. Legal Opinion of the State Attorney General.

4. Legal Document Designating the Department of Environmental Resources as the Regulatory Authority.

5. Structural Organization—Staffing Functions.

6. Copy of Supporting Agreements with other State Agencies.

7. Narrative description for:

a. Issuing Exploration and Mining Permits.

b. Assessing Fees.

c. Bonding and Insurance.

d. Inspection and Monitoring.

e. Enforcing the Administrative, Civil and Criminal Sanctions.

f. Administering and Enforcing Permanent Program Standards.

g. Assessing and Collecting Civil Penalties.

h. Public Notices and Hearings.

i. Coordination and Consultation with Other Agencies.

j. Designating Lands Unsuitable for Mining.

k. Conflict of Interest Requirements.

l. Providing for Public Participation.

m. Providing Administrative and Judical Review.

n. Small Operator Assistance Program.

o. Statistical Information.

p. Summary of Staff with Titles, Functions, Job Experience and Training.

q. Discription of Staffing Adequacy.

r. Budget Information.

s. Description of Physical Resources.

t. Anthracite Mining.

u. Other Programs Administered by the Regulatory Authority.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed Pennsylvania program. Under Section 702(d) of SMCRA (30 U.S.C. 1292(d)) approval does not constitute a major action within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1979 (42 U.S.C. 4332). This document is not a major rule under E.O. 12291; therefore, no Regulatory Impact Analysis is being prepared on this approval.

Dated: January 26, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-2393 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[AEN-5-FRL-2037-8]

State Implementation Plan Requirements; Proposed Delayed Compliance Order for Columbus and Southern Ohio Electric Co.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an order pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. 7401 *et seq.* (the Act) to Columbus and Southern Ohio Electric Company (C&SOE). The order requires the Company to bring four coal-fired boilers at the Conesville Generating Station into compliance with 40 CFR 52.1881(b)(21), part of the federally promulgated implementation plan for the State of Ohio (SIP). Because C&SOE is presently unable to comply with the SIP, the proposed order would establish an expeditious schedule requiring final compliance by June 19, 1984. Source compliance with the order would preclude further federal enforcement action under Section 113 of the Act and citizen enforcement action under Section 304 of the Act for violation of the SIP regulations covered by the order during the period the order is in effect and the source is in compliance with the order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on the proposed order.

DATES: Written comments and requests for a public hering must be received on or before the thirtieth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, place, and subject of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to the Regional Administrator, U.S. EPA, Region V, 230 South Dearborn Street,

Chicago, Illiois 60604. Material supporting the order and public comments recieved in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Catherine Fox, Enforcement Attorney, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353–2084.

SUPPLEMENTARY INFORMATION: C&SOE owns a generating station in Conesville, Ohio. The proposed order addresses emissions from four coal-fired boilers at this facility, which are subject to 40 CFR 52.1881(b)(21) of the Ohio Implementation Plan. The regulation limits the emission of sulfur dioxide and is part of the federally promulgated Ohio State Implementation Plan. The Order requires final compliance with the regulation by June 19, 1984, and the source has consented to its terms.

The proposed order satisfies the applicable requirements of Section 113(d) of the Act. If the order is issued, source compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarily precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the **Federal Register** the Agency's final action on the order in 40 CFR Part 65.

Dated: January 7, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82–2339 Filed 1–28–82; 8:45 am]

BILLING CODE 6560–38–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81–737; RM–3882]

FM Broadcast Stations in Ortonville, Olivia, and Montevideo, Minnesota; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding involving proposed channel substitutions in various Minnesota communities. Counsel for petitioner states that additional time is needed to formulate a proper response.

DATE: Reply comments must be filed on or before February 5, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Ortonville, Olivia, and Montevideo, Minnesota); Order extending time for filing reply comments.

Adopted: January 19, 1982.

Released: January 25, 1982.

1. On October 19, 1981, the Commission adopted a *Notice of Proposed Rule Making*, 46 FR 53471, published October 29, 1981, in the above-captioned proceeding. Comments have been filed and reply comments are due January 19, 1982.

2. On January 7, 1982, counsel for Tri-State Broadcasting Company ("Tri-State"), licensee of AM Station KDIO, Ortonville, Minnesota, and applicant for Channel 292A in that community, filed a request for extension of time to and including February 5, 1982, within which to file reply comments herein. Counsel states that because of a delay in mail delivery of the proponent's comments to its consulting engineer, additional time is necessary to enable him to evaluate the contents thereof and prepare a proper response.

3. Counsel also advises that due to a shortage of time, not all of the parties hereto were contacted regarding this extension request, but adds his belief that no objections will be interposed. These parties were served with the request, however.

4. Since it appears that no other party to the proceeding would be prejudiced by a grant of the instant request, the Commission is of the view that additional time is warranted to afford Tri-State a moderate period in which to formulate its reply comments. Additionally, such extension will assure development of a sound and comprehensive record on which to base a decision in this proceeding.

5. Accordingly, it is ordered, that the time for filing reply comments in BC Docket No. 81–737 (RM–3882) is extended to and including February 5, 1982.

6. This action is taken pursuant to authority contained in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–2337 Filed 1–28–82; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[Docket No. 19079; FCC 82–2]

Amendment To Permit a Wider Range of Uses for FM Multiplex Channels of Noncommerical Educational FM Stations

AGENCY: Federal Communications Commission.

ACTION: Order terminating proposed rulemaking proceeding.

SUMMARY: Action taken herein terminates proceeding in Docket No. 19079 without adopting proposed changes in the rules governing noncommercial educational FM station use of an FM multiplex channel (SCA). This action was necessary to close out a proceeding where the record was not current enough so as to base a decision.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.593 of the Commission's rules to permit a wider range of uses for FM multiplex channels of noncommercial educational FM stations; Order.

Adopted: January 5, 1982.

By the Commission:

Released: January 11, 1982.

1. In a *Notice of Proposed Rule Making* adopted November 4, 1970 (35 FR 17359; November 11, 1970) (FCC 70–189) the Commission began the present proceeding which was designed to explore permitting a wider range of uses for FM multiplex Channels (SCA's) of noncommercial educational FM stations, now called public broadcasting stations.

2. The original *Notice of Proposed Rule Making* raised two basic issues relating to public broadcasting FM station SCA use. Both of these issues have long since been resolved. A new matter, that of using these SCA's for the transmission of non-broadcast information was mentioned in comments to the original *Notice* and was the subject of a *Further Notice* adopted February 18, 1976 (41 FR 11032; March 16, 1976).

3. Although the question raised by the proceeding is an important one, the present record is not adequate to resolve it. This is especially true because of important technological changes which have occurred in recent years. Therefore, we have decided to terminate this proceeding and to focus our attention on a new proceeding designed to explore changes in public broadcasting FM SCA use. As proposed in the *Notice of Proposed Rule Making* adopted today, public broadcasting FM stations would be able to use their SCA for the same purposes that commercial stations could. This would include the recently authorized non-broadcasting use of a commercial FM station's SCA for utility load management. See the *Report and Order* in BC Docket 81–352, adopted December 17, 1981.

4. Therefore it is ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-2310 Filed 1-28-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 81 and 83

[PR Docket No. 82-11; FCC 82-10]

Enlargement of the Designated New Orleans VTS Radio Protected Area to West Longitude 93 Degrees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes that the New Orleans vessel traffic services (VTS) radio protected area be enlarged to 93 degrees west longitude. This rule making was initiated in response to an informal request by the Commandant, United States Coast Guard (USCG). These rules will enable the USCG to service the increased vessel traffic in this area.

DATES: Comments must be received by March 3, 1982. Reply comments must be received by March 18, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Linda R. Figueroa, Private Radio Bureau, Washington, D.C. 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

Adopted: January 13, 1982.

Released: January 25, 1982.

By the Commission:

1. In this Notice, we propose to amend Parts 81 and 83 of the Commission's rules to enlarge the New Orleans Vessel Traffic Services (VTS) radio protected area by moving the western boundary from 92 to 93 degrees west longitude.

Background

2. The United States Coast Guard (USCG) has established a VTS system for a number of the largest and busiest port areas in the United States. This program was initiated in order to implement the provisions of the "Ports and Waterways Safety Act of 1972".[1] A VTS is a vessel movement reporting system which is designed to prevent damage to or loss of vessels, bridges or other structures in United States navigable waters, and to protect these waters and associated natural resources from environmental harm resulting from such damage or loss. At the request of the Commandant, USCG the Commission amended the rules so as to designate up to three frequencies exclusively for VTS communications within the designated VTS radio protected area.[2] The frequencies available for VTS communications, under specified conditions, are contained in §§ 81.357 and 83.361 of the rules, which designate 156.550 MHz, 156.600 MHz and 157.700 MHz exclusively for USCG VTS communications in the New Orleans VTS radio protected area.

Discussion

3. We have been requested by the Commandant, USCG to amend the rules to enlarge the New Orleans VTS radio protected area [3] by moving the western boundary from 92 to 93 degrees west longitude. The USCG's request for the enlargement of the New Orleans VTS area arises from an increase in traffic in the Berwick, Louisiana area. In the past the USCG has operated a VTS facility in Berwick using Channel 13 as the VTS operating frequency. However, traffic in this area has increased to the point that VTS communications are interfering with bridge-to-bridge communications on Channel 13. In order to eliminate this problem the USCG plans to shift VTS communications to Channel 11. The requested enlargement of the New Orleans VTS radio protected area would include the Berwick area and, thereby, permit the USCG to utilize Channel 11.

4. The expansion of the New Orleans VTS radio protected area required to include Berwick would entail moving the boundary approximately 60 miles to the west. This is not a largely populated area. The USCG has indicated that prior testing and soliciting of comments from the local maritime community indicates that expansion of the New Orleans VTS area will not have an adverse impact on the licensees in the Berwick area.

Proposal

5. Accordingly, we propose to amend §§ 81.357 and 83.361 of the Commission's rules in order to enlarge the New Orleans VTS radio protected area from 92 to 93 degrees west longitude.

6. The proposed amendments to the Commission's rules as set forth in the attached Appendix, are issued under the authority contained in Sections 4(i) and 303(c) and (r) of the Communications Act of 1934, as amended.

Comments

7. Under procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before March 3, 1982 and reply comments on or before March 18, 1982. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours

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[1] Pub. L. 92–340, 86 Stat. 424, 46 U.S.C. 1551.

[2] *Report and Order*, Docket No. 20444 adopted December 2, 1975, 40 FR 57673, 56 FCC 2d 1089.

[3] Sections 81.357(b)(2) and 83.361(b)(2) of the Commission's rules state: "New Orleans: The rectangle between north latitudes 27°30' and 31°30' and west longitude 87°30' and 92°; * * *"

in the Commission's Public Reference Room at its headquarters in Washington, D.C.

9. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comment/pleadings and formal oral arguments) between a person outside the Commission and a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion on the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

10. The Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 [4] do not apply to this rulemaking proceeding. The USCG VTS system is operated as part of a Congressional mandate in the "Ports and Waterways Safety Act of 1972". The area that will be affected by the expansion is not a heavily populated area. A few licensees in the Maritime Radio Service would be required to shift communications from three specified marine channels to other available channels. Consequently, the rule will not if promulgated have a significant economic impact on a substantial number of small entities.

11. Regarding questions on matters covered in this document, contact Linda R. Figueroa (202) 632-7175.

[4] Pub. L. 96-354.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

1. Section 81.357(b)(2) is revised to enlarge the VTS radio protected area to west longitued 93°.

§ 81.357 Frequencies available for use in Vessel Traffic Services Systems.

* * * * *

(b) * * *

(2) New Orleans: The rectangle between north latitudes 27°30′ and 31°30′ and west longitudes 87°30′ and 93°; frequencies 156.550 MHz, 156.600 MHz and 156.700 MHz.

* * * * *

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICE

2. Section 83.361(b)(2) is revised to enlarge the VTS radio protected area to west longitude 93°.

§ 83.361 Frequencies available for use in Vessel Traffic Services Systems.

* * * * *

(b) * * *

(2) New Orleans: The rectangle between north latitudes 27°30′ and 31°30′ and west longitude 87°30′ and 93°; frequencies 156.550 MHz, 156.600 MHz and 156.700 MHz.

* * * * *

[FR Doc. 82-2309 Filed 1-28-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR PART 74

[BC Docket No. 81-794; RM-3893]

Shared Use of Broadcast Auxiliary Facilities With Other Broadcast and Non-Broadcast Entities and To Establish New Licensing Policies for Television Auxiliary Broadcast Stations; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; extension of comment/reply comment period.

SUMMARY: In order to allow interested parties sufficient time to address the many complex issues involved in a proposed rule relating to television auxiliary broadcast stations, the dates for filing comments are extended to March 12, 1982, for comments and April 12, 1982, for reply comments. This action is taken at the request of the National Association of Broadcasters.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. McGregor, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: January 19, 1982.

Released: January 25, 1982.

In the matter of Amendment of Part 74, Subpart F of the Commission's Rules to permit shared use of broadcast auxiliary facilities with other braodcast and non-broadcast entities and to establish new Licensing Policies for television auxiliary broadcast stations, BC Docket No. 81-794 RM-3893, (46 FR 60024; December 8, 1981). Order granting motion for extension of time to file comments.

1. On January 18, 1982, the Commission received a Motion for Extension of Time to file comments in the above-captioned matter from the National Association of Broadcasters ("NAB"). Petitioner requests that the date for filing comments and reply comments be extended 45 days from the present filing dates of January 25, 1982, for comments and February 24, 1982, for replies, to March 12, 1982, for comments and April 12, 1982, for replies.

2. NAB contends that the requested extension is necessary to permit the comprehensive analysis which is required of the several complex and significant legal and engineering issues raised in the proceeding. According to NAB, several of the proposed changes represent major departures from present and historic licensing policies with respect to auxiliary broadcast frequencies. NAB cites our proposal to allow the use of broadcast auxiliary frequencies to transmit non-broadcast material by and to entities other than broadcast licensees, either on a shared cost or for-profit basis, as having broad implications for all present and future users of broadcast auxiliary frequencies. According to NAB, the importance and complexity of these issues warrant additional time for the preparation of comments.

3. In consideration of the number and complexity of issues included in this rule making, and the Commission's interest in obtaining a full and complete record, the petition of NAB will be granted. Because we are granting a significant amount of additional time for

filing comments, we do not anticipate that further extensions will be granted.

4. Accordingly, it is ordered, That the date for filing comments is extended to March 12, 1982, for comments, and April 12, 1982, for replies.

5. This action is taken pursuant to authority found in § 4(i) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

Martin Blumenthal,

Assistant Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 82-2336 Filed 1-28-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 20
Friday, January 29, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Umatilla National Forest Grazing Advisory Board; Meeting

The meeting date for the Umatilla National Forest Grazing Advisory Board has been changed from 1 p.m., February 8, 1982, to 1 p.m., February 22, 1982. It will be held at the U.S. Forest Service Office, 2517 S.W. Hailey Avenue in Pendleton, Oregon. The purpose of the meeting is to develop the Forest's 1983 Range Improvement and review the progress on the 1982 program.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor's Office at 2517 S.W. Hailey Avenue, Pendleton, Oregon 97801, or call 276–3811, ext. 415. Written statements may be filed with the Forest Service before or after the meeting.

The established rules for public participation are that a time period will be set up for the public to participate. Time limits may be set on individual public participation.

John E. Lowe,
Forest Supervisor.
January 22, 1982.
[FR Doc. 82–2344 Filed 1–28–82; 8:45 am]
BILLING CODE 3410–11–M

Rural Electrification Administration

Basin Electric Power Cooperative; Final Environmental Impact Statement

The Rural Electrification Administration (REA) has issued a Final Environmental Impact Statement (FEIS) in connection with potential financing assistance to Basin Electric Power Cooperative (Basin), 1717 East Interstate Avenue, Bismarck, North Dakota 58501, which would enable Basin to obtain financing for the construction of a 112 km (70 miles) 345 kV transmission line and related facilities.

The proposed line would connect Antelope Valley Station (AVS) near Beulah, North Dakota, and Charlie Creek Substation (CCS) near Killdeer, North Dakota, and traverse portions of Billings, Dunn, McKenzie, and Mercer Counties. The related facilities include an additional bay at AVS and installation of an autotransformer with associated switching and control equipment at CCS.

Alternatives considered in the FEIS are no action, alternative voltages, upgrading of existing facilities, nonelectrification of oil and gas developments, alternative energy sources, energy conservation and load management, and alternative corridors and construction methods.

The preferred alternative which is construction of the 345 kV transmission line crosses the Spring Creek floodplain which is approximately 0.4 to 0.8 km (.25 to .5 m) wide at the preferred point of crossing. One transmission tower with a base of .01 ha (.02 acre) will be located in the floodplain. REA has concluded that there is no practicable alternative to crossing the floodplain. Further information concerning this matter can be found in the FEIS.

Copies of the FEIS have been sent to various Federal, State, and local agencies as outlined in the Council of Environmental Quality regulations. Limited supplies of the FEIS are available upon request to: Mr. Frank W. Bennett, Director, Power Supply Division, Rural Electrification Administration, 14th St., and Independence Ave., S.W., Washington, D.C. 20250

The FEIS may also be examined during regular business hours at the following locations and at local libraries in the project area.

Rural Electrification Administration, USDA, 14th and Independence Ave., S.W., Room 0230 Washington, D.C. 20250

Basin Electric Power Cooperative, 1717 East Interstate Ave., Bismarck, North Dakota 58501

Final REA action with respect to this matter will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after compliance with the National Environmental Policy Act and other environmentally related statutes, regulations, Executive Orders and Secretary's Memoranda normally considered by REA.

This Federal assistance program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 25th day of January, 1982.

Harold V. Hunter,
Administrator.
[FR Doc. 82–2327 Filed 1–28–82; 8:45 am]
BILLING CODE 3410–15–M

Soil Conservation Service

Four Winds RC&D Area; Childress County Roadside Erosion RC&D Measure, Texas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple, Texas 76503, telephone 817–774–1214.

NOTICE: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Childress County Roadside Erosion RC&D Measure, Childress County, Texas.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. Planned works of improvement include shaping and vegetating 12.8 acres of eroding areas and installing three grade stabilization structures on 4.7 acres.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting George C. Marks. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until March 1, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: January 20, 1982.

Jimmy Hill,

Acting State Conservationist.

[FR Doc. 82-2157 Filed 1-28-82; 8:45 am]

BILLING CODE 3410-16-M

Upper and Lower McKee Creek Watersheds (North Fork), Illinois; Deauthorization of Federal Funding

Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of deauthorization of Federal funding for the Upper and Lower McKee Creek Watersheds (North Fork), Illinois, effective January 21, 1982.

A notice of intent not to file an environmental impact statement for deauthorization of Federal funding was published on November 20, 1981 (46 FR 57100). Appropriate committees of Congress and concerned Federal, State, and local agencies were notified of the proposed deauthorization at least 60 days prior to the effective date. No objections to deauthorization or expressions of support to complete the project have been made known to the Soil Conservation Service.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566 (16 U.S.C. 1001-1008))

Dated: January 21, 1982.

August J. Dornbusch, Jr.,

Acting State Conservationist, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 82-2276 Filed 1-28-82; 8:45 am]

BILLING CODE 3410-16-M

Spring-Bull Creek Watershed, South Dakota; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Robert D. Swenson, State Conservationist, Soil Conservation Service, Federal Building, 200 Fourth Street S.W., Huron, South Dakota 57350, telephone (605) 352-8651, Ext. 333 (commercial), or 782-333 (FTS).

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Spring-Bull Creek Watershed, Charles Mix County, South Dakota.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert D. Swenson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The planned works of improvement include regrading, rock riprapping, and reseeding the outlet reach of Bull Creek channel (3200 ft.).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert D. Swenson. The FONSI has been prepared and sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until March 1, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Robert D. Swenson,

State Conservationist.

January 15, 1982.

[FR Doc. 82-2051 Filed 1-28-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 34009]

George R. Guyer, Complainant v. Western Air Lines, Inc., Respondent Enforcement Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to Judge Vittone.

Dated at Washington, D.C., January 21, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-2372 Filed 1-28-82; 8:45 am]

BILLING CODE 6320-01-M

Application of Best Airlines, Inc. For a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting a Fitness Investigation of Best Airlines, Inc., 82-1-110, Docket 40310.

SUMMARY: The Board is issuing an order instituting a fitness investigation of Best Airlines, Inc.

DATE: Persons wishing to file petitions to intervene in the *Best Airlines Fitness Investigation* shall file their petitions in Docket 40310 by February 11, 1982 and serve such filings on all persons listed below.

ADDRESSES: Petitions to intervene should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 40310, application of Best Airlines, Inc. for a certificate of public convenience and necessity.

In addition, copies of such filings should be served on: Best Airlines, Inc.; the Mayors of Chicago, Illinois; Akron, Ohio; Canton Ohio; Youngstown, Ohio; Newark, New Jersey; and New York, New York; the managers of these cities' airports; the State Department of Transportation or Aeronautics Commission of Illinois, Ohio, New Jersey and New York; and the Federal Aviation Administration.

Service will also be required on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT:

Carol A. Szekely, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673–5328.

SUPPLEMENTARY INFORMATION: The complete test of Order 82–1–110 is available from our Distribution Section, Room 100, 1825 Connecticut Ave., N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 82–1–110 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: January 25, 1982.

Phillis T. Kaylor,

Secretary.

[FR Doc. 82–2375 Filed 1–28–82; 8:45 am]

BILLING CODE 6320–01–M

Order Disposing of Lufthansa Complaints Against Pan American's U.S.-Germany "Two-for-one Pass" and Special Normal Economy Fares

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 82-1-85.

SUMMARY: The Board is instituting a limited investigation of Pan American's U.S.-Germany special normal economy fares and is dismissing Lufthansa's complaint against that carrier's U.S.-Germany "two-for-one pass" fares. The Board is initiating this action in recognition of the strong views of the German authorities expressed during recent fare consultations. While the Board could not conclude that the special normal economy fares are unlawful, the investigation will permit a more thorough evaluation of Lufthansa's claims as marketplace experience with the new special normal economy fares develops and will provide a basis for expeditious intervention should circumstances warrant.

FOR FURTHER INFORMATION CONTACT:

Joseph DiBella, Bureau of International Aviation, 1825 Connecticut Avenue N.W., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–1–85 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington D.C. Persons outside the metropolitan area may send a post card request for Order 82–1–85 to the Distribution Section, Civil Aeronautics Board, Washington, D.C.

By the Civil Aeronautics Board: January 19, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–2374 Filed 1–28–82; 8:45 am]

BILLING CODE 6320–01–M

[Docket 39158]

Premiere Airlines (Formerly Wings International Airways) Fitness Investigation (Remanded); Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to Judge Vittone.

Dated at Washington, D.C., January 22, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82–2373 Filed 1–28–82; 8:45 am]

BILLING CODE 6320–01–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1982; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1982 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 29, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 14, 1981 and November 6, 1981, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (46 FR 41130 and 46 FR 55133) of proposed additions to Procurement List 1982, November 12, 1981 (46 FR 55740).

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities and service are hereby added to Procurement List 1982:

Class 8415

Socks, Extreme Cold Weather
8415–00–177–7992
8415–00–177–7993
8415–00–177–7994

SIC 7349

Janitorial/Custodial, Forest Service Building, 507 25th Street, Ogden, Utah

C. W. Fletcher,

Executive Director.

[FR Doc. 82–2325 Filed 1–28–82; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1982; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1982 services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 3, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1982, November 12, 1981 (46 FR 55740):

SIC 7331

Mailing Service, U.S. Department of Transportation, Office of the Secretary, Distribution Unit, 400 7th Street, S.W., Washington, D.C.

SIC 7332

Photocopying Service, National Agricultural Library, Beltsville, Maryland

SIC 7349

Janitorial/Custodial, Veterans Administration Medical Center, Building #32, Dublin, Georgia

Federal Building and U.S. Post Office and Courthouse, Greenville, Mississippi

General Services Administration Center, Buildings 811 and 812, Auburn, Washington
Federal Building and U.S. Post Office, Spokane, Washington

SIC 7369

Commissary Shelf Stocking and Custodial Services, Robins Air Force Base, Georgia

Deletions

It is proposed to delete the following services from Procurement List 1982, November 12, 1981 (46 FR 55740):

SIC 0782

Grounds Maintenance, RFK Stadium, Washington, D.C.

SIC 7369

Commissary Shelf Stocking and Custodial Service, Edwards Air Force Base, California

SIC 7641

Furniture Rehabilitation, Monterey, California, plus 10-mile radius, including Fort Ord
San Francisco, California and the counties of Alameda, Contra Costa, San Mateo and Santa Clara

SIC 7699

Repair and Maintenance of Electric and Manual Typewriters for the following locations:
U.S. Customs, Milwaukee, Wisconsin
U.S. Federal Office Building, Milwaukee, Wisconsin
Veterans Administration Regional Office, Milwaukee, Wisconsin
Veterans Administration Center and Hospital, Wood, Wisconsin

C. W. Fletcher,

Executive Director.

[FR Doc. 82-2326 Filed 1-28-82; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patent Application for Licensing

Pursuant to the provisions of the General Services Administration's temporary licensing regulations, the Department of the Army announces the intention to grant to Fiber Materials, Inc., a corporation of the State of Massachusetts, a limited exclusive license under U.S. Patent No. 3,838,497, issued on October 1, 1974, entitled "Attachment of Rotating Band to Shell Casing by Brazing," invented by Fortunate J. Rizzatano et al.

This license will be granted unless compelling reasons for not granting such a license are received by the Chief, Intellectual Property Division, Ofice of the Judge Advocate General, Department of the Army, Washington, DC 20310 within 60 days of this notice.

For further information concerning this notice, contact: LTC Neil K. Nydegger, HQDA (DAJA-IP) Pentagon—Room 2D 444, Washington, DC 20310, Telephone No. 695-9356.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 82-2346 Filed 1-28-82; 8:45 am]

BILLING CODE 3710-08-M

Intent to grant a limited exclusive license to Fiber Materials, Inc.,

Pursuant to the provisions of the General Services Administration's temporary licensing regulations, the Department of the Army announces the intention to grant to Fiber Materials, Inc., a corporation of the State of Masschusetts, a limited exclusive license under U.S. Patent No. 3,838,497, issued on October 1, 1974, entitled "Attachment of Rotating Band to Shell Casing by Brazing," invented by Fortunate J. Rizzatano et. al.

This license will be granted unless compelling reasons for not granting such a license are received by the Chief, Intellecutal Property Division, Office of the Judge Advocate General, Department of the Army, Washington, DC 20310 within 60 days of this notice.

For further information concerning this notice, contact: LTC Neil K. Nydegger, HQDA (DAJA-IP) Pentagon—Room 2D 444, Washington, DC 20310, Telephone No. 695-9356.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 82-2345 Filed 1-28-82; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Privacy Act of 1974; Deletions of Notices for Systems of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Deletions of notices for systems of records.

SUMMARY: The U.S. Marine Corps is deleting the notices for 7 systems of records in its inventory of records subject to the Privacy Act of 1974. The reasons for the deletions are set forth below.

DATE: The deletion shall be effective immediately.

ADDRESSES: Send any comments to System Manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C. 20380, telephone: 202/694-1452.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps systems notices for records systems subject to the Privacy Act of 1974, Title 5, United States Code Section 552a (Pub. L. 93-579; 44 Stat. 1896, *et seq.*), were published in the **Federal Register** at: FR Doc. 82-674 (47 FR 2544) January 18, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

January 26, 1982.

Deletions

Reason:

This system is adequately covered under the Department of the Navy system notice NO4060-1, Navy and Marine Corps Exchange and Commissary Sales Control and Security Files.

MIL00007

System name:

Marine Corps Exchange Service Station Work Orders (46 FR 6653) January 21, 1981

MIL00008

System name:

Cigarettes Sales Abuse File (46 FR 6653) January 21, 1981

Reason:

This system is adequately covered under the Department of the Navy system notice N04060-1, Navy and Marine Corps Exchange and Commissary Sales Control and Security Files.

MIL00009

System name:

Fire Arms Transaction Record (46 FR 6653) January 21, 1981

Reason:

This system is adequately covered under the Department of the Navy system notice N04060-1, Navy and Marine Corps Exchange and Commissary Sales Control and Security Files.

MIL00010

System name:

Customer Service Records/Special Accounts (46 FR 6654) January 21, 1981

Reason:

This system is adequately covered under the Department of the Navy system notice N04060–1, Navy and Marine Corps Exchnge and Commissary Sales Control and Security Files.

MIS00001

System name:

Personnel Management Subsystem (RCS) (46 FR 6661) January 21, 1981

Reason:

This system has been discontinued.

MMN00007

System name:

Marine Corps Motion Picture/ Instructional Television (ITV) Archives (46 FR 6677) January 21, 1981

Reason:

This system has been discontinued.

MMN00008

System name:

Marine Corps Still Photographic Archives (46 FR 6677) January 21, 1981

Reason:

This system has been discontinued.

[FR Doc. 82–2408 Filed 1–28–82; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Diffusion Network Program

AGENCY: Department of Education.

ACTION: Application notice for the National Diffusion Network Program.

Applications are invited for New Developer Demonstrator projects, noncompeting Continuing Developer Demonstrator projects, and noncompeting Continuing Facilitator projects for fiscal year 1982 under the National Diffusion Network Program.

The Secretary awards New Developer Demonstrator grants to public or nonprofit private agencies, organizations, and institutions that have developed an exemplary educational program as defined in the applicable regulations. The purpose of the program is to promote widespread installation across the nation of rigorously evaluated, exemplary educational programs.

Authority for this program is contained in Section 583 of the Education Consolidation and Improvement Act of 1981 (Pub. L. 97–35). (20 U.S.C. 3851)

Closing date for transmittal of applications: Applications for noncompeting Continuing Facilitator and Developer Demonstrator grants must be mailed or hand-delivered by March 2, 1982. Applications for New Developer Demonstrator grants must be mailed or hand-delivered by June 2, 1982.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, ATTENTION: *84.073A:* New Developer Demonstrators; *84.073B:* Continuing Developer Demonstrators; or *84.073D:* Continuing Facilitators, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new award that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

If a noncompeting continuing application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuing applications and may decline to accept it.

Program information: It is expected that new awards will be for a period not to exceed four years contingent on performance and availability of funds. No New Facilitator project grants will be awarded.

Because of the limited resources available, the Secretary has selected general content areas (these are called "absolute priorities" under EDGAR § 75.105(a)(3)) taking into account unmet national needs. This year, applications will be accepted in the following general content areas:

1. Bilingual Education—The Secretary invites applications which demonstrate alternative programs for teaching English to students whose dominant language is not English.
2. Science.
3. Organizational Arrangements/ Administration.
4. Preservice/Inservice Training.
5. Reading Programs for Grades 5–12/ Mathematics/and Language Arts—The Secretary invites applications which demonstrate programs for teaching foreign languages and which demonstrate programs that develop writing skills.
6. Gifted and Talented.
7. Technology—The Secretary invites applications which demonstrate programs that teach computer literacy and/or use technology to improve instruction.

The Secretary selects applications for New Developer Demonstrator grants under each selected general content area separately. Thus, under this application notice there are seven separate competitions. The Secretary has also invited certain kinds of applications under some of the general content areas listed above (1, 5, and 7). The Secretary seeks applications that meet these invitational priorities to encourage the submission of applications that address these specific needs. An application that meets an invitational priority receives no preference over other applications within the same general content area.

Applications for noncompeting Continuing Developer Demonstrator project awards and four noncompeting Continuing Facilitator project awards will be reviewed under the provisions of 34 CFR 75.253.

Available funds: It is expected that approximately $9,000,000 will be available for funding the National Diffusion Network Program in fiscal year 1982.

It is estimated that these funds could support at least 13 New Developer Demonstrator projects, averaging $39,000; up to 84 Continuing Developer Demonstrator projects, averaging $39,000; up to 84 Continuing Developer Demonstrator projects, averaging $50,000; and approximately 55 Continuing Facilitator projects, averaging $78,000.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants under any of the priorities listed above or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms are included in a program information package that is expected to be ready for mailing by late January, 1982. Interested persons may obtain program information packages by writing to the National Diffusion Network Division, U.S. Department of Education, Room 802, Riviere Building, 1832 M Street, NW., Washington, D.C. 20036.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms, provided in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the National Diffusion Network Program in 34 CFR Part 796 (formerly 45 CFR Part 193) published in the **Federal Register** on April 21, 1980, (45 FR 26914).

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 and 77 (formerly 45 CFR Parts 100a and 100c).

FURTHER INFORMATION: For further information contact Mr. Robert W. Mulligan, National Diffusion Network Division, U.S. Department of Education, Room 802, Riviere Building, 1832 M Street, NW., Washington, D.C. 20036. Telephone (202) 653–7000.

(Catalog of Federal Domestic Assistance Number 84.073, National Diffusion Network Program)

Dated: January 25, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82–2378 Filed 1–28–82; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Uranium Enrichment and Assessment; Proposed Pricing Policy Change; Correction

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In the **Federal Register** Notice of January 7, 1982, appearing on pages 846 and 847 make the following correction.

On page 847, in paragraph 3.(e): delete; "(e) The standard processing loss factor to be applied to toll enricher's acquisition of tails material is 0.05."; and insert (e) The standard processing loss factor to be applied to toll enricher's acquisition of tails material is 0.05%.

Dated: January 20, 1982.

Shelby T. Brewer,

Assistant Secretary for Nuclear Energy.

[FR Doc. 82–2376 Filed 1–28–82; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval for the following sales:

Contract Number S–CA–318, to the Atomic Energy of Canada, Ltd., 0.001 grams of plutonium–244 for use as standard reference material.

Contract Number S–EU–706, to COGEMA, Razes, France, 260 grams of natural uranium for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than February 16, 1982.

For the Department of Energy.

Dated: January 26, 1982.

Fred McGoldrick,

Deputy Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82–2281 Filed 1–28–82; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Cancellation of Portion of Meeting

This notice is given to advise of the cancellation of the second day's meeting (February 5, 1982) of the Energy Research Advisory Board. The Thursday, February 4, 1982 portion of the meeting will be held as published in the issue of January 15, 1982 (47 FR 2398).

Issued at Washington, DC on January 25, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 82–2282 Filed 1–28–82; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[WEN–FRL–2038–1]

National Pollutant Discharge Elimination System (NPDES); Availability of Treatability Manual

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Technical Information and Request for Comments.

SUMMARY: This notice announces the availability of, and provides a review and comment period on, the revised Treatability Manual and summarizes significant comments received on the first edition of the Treatability Manual.

DATE: Comments may be submitted at any time. However, to be considered for inclusion in the Manual's next scheduled annual supplement or revision, comments must be received on or before June 1, 1982.

ADDRESSES: Interested persons may obtain a copy of the revised Treatability Manual after March 26, 1982 by requesting publication stock number 055–000–00215–1 from the Superintendent of Documents, U.S. Government Printing Office, Department 50, Washington, D.C. 20402. The price of the Manual is $43.00. The Treatability Manual is available for examination at the following EPA Offices and

Laboratories, State program offices, and other offices after February 15, 1982.

EPA Headquarters

Public Information Reference Unit, Room 2404, U.S. EPA, 401 M Street, SW, Washington, D.C. 20460, (202) 755–0308

EPA Regions

Region I

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
Library, EPA Region I, Twenty-first Floor, JFK Building, Boston, Massachusetts 02203, (617) 223–5791
Librarian, Environmental Research Laboratory, U.S. EPA, South Ferry Road, Narragansett, Rhode Island 02882, (401) 789–1071

Region II

(New Jersey, New York, Puerto Rico, Virgin Islands)
Permits Administration Branch, EPA Region II, Room 432, 26 Federal Plaza, New York, New York 10278, (212) 264–9881

Region III

(Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia)
Library, EPA Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597–0580

Region IV

(Alabama, Georgia, Florida, Mississippi, North Carolina, South Carolina, Tennessee, Kentucky)
Library, EPA Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 881–4216
Public Information Office, Environmental Research Center, U.S. EPA, Room M–306, Research Triangle Park, North Carolina 27711, (919) 541–4577
Robert C. Ryans, Environmental Research Laboratory, U.S. EPA, College Station Road, Athens, Georgia 30613, (404) 546–3306
Andre Lowery, Librarian, Environmental Research Laboratory, U.S. EPA, Sabine Island, Gulf Breeze, Florida 32561, (904) 932–5311 Ext. 218

Region V

(Illinois, Indiana, Ohio, Michigan, Wisconsin, Minnesota)
Ms. Lou W. Tilley, Librarian, Library, EPA Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 353–2022
Library Environmental Research Laboratory, U.S. EPA, 6201 Congdon Blvd., Duluth, Minnesota 55804, (218) 727–6692
Public Information, A. W. Breidenbach Environmental Research Center, U.S. EPA, 26 W. St. Clair Street, Cincinnati, Ohio 45268, (513) 684–7771

Region VI

(Arkansas, Louisiana, Oklahoma, Texas, New Mexico)
Oscar Cabra, EPA Region VI, First International Building, 1201 Elm Street, Dallas, Texas 75270, (214) 767–4375
Marvin L. Wood, Robert S. Kerr Environmental Research Laboratory, U.S. EPA, Ada, Oklahoma 74820, (405) 332–8800

Region VII

(Iowa, Kansas, Missouri, Nebraska)
Library, EPA Region VII, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374–3497

Region VIII

(Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota)
Delores Eddy, Librarian, EPA Region VIII, Room 101, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–2560

Region IX

(Aarizona, California, Nevada, Hawaii)
Library, EPA Region IX, 215 Fremont Street, San Francisco, California 94105, (415) 556–3454
Office of Environmental Quality, City Hall, 400 East Stewart Street, Las Vegas, Nevada 89101, (702) 386–6277

Region X

(Alaska, Idaho, Oregon, Washington)
Library, EPA Region X, 12th Floor, 1200 6th Avenue, Seattle, Washington 98101, (206) 442–1289
Karen K. Randolph, Research Information Office, Room 101, Environmental Research Laboratory, U.S. EPA, 200 SW 35th Street, Corvallis, Oregon 97330, (503) 757–4637

States and Territories

Alabama—Alabama Water Improvement Commission, Gunter Industrial Park, 2721 Gunter Park Drive, Montgomery, Alabama 36130 (205) 277–3630
Alaska—Alaska Operation Office, EPA Room E–535, Federal Building, 701 C Street, Anchorage, Alaska 99513 (907) 271–5083
American Samoa—Pati Faiai, Executive Secretary, Environmental Quality Commission, Pago Pago, American Samoa 96920
Arizona—Will Gilbert, Arizona Department of Health Services, 1740 West Adams Street, Phoenix, Arizona 85007 (602) 255–1277
Arkansas—John Ward, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209 (501) 371–1135
California— Edward C. Anton, California State Water Resources Control Board, 1416 9th Street, Room 631, Sacramento, California 95801 (916) 322–3133
Colorado—Mr. Arden Wallum, Colorado Department of Health, Water Quality Control Division, 4210 East 11th Avenue, Denver, Colorado 80220 (303) 320–8333 Ext. 3361
Connecticut—Connecticut Department of Environmental Protection, Water Compliance Unit, 122 Washington Street, Hartford, Connecticut 06115 (203) 566–7167
Delaware—Mr. Robert J. Zimmerman, Supervisor, Department of Natural Resources & Environmental Control, Water Resources Section, Room 203, Blue Hen Mall, Dover, Delaware 19901 (302) 736–5726
District of Columbia—District of Columbia Department of Environmental Services, Room 309, 415 12th Street, NW., Washington, D.C. 20004 (202) 727–5748
Florida—Library, Florida Department of Environmental Regulation, Room 423, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301 (904) 488–0870
Georgia—Water Protection Branch, Georgia Environmental Protection Division, 270 Washington Street, SW., Atlanta, Georgia 30334 (404) 656–4887
Guam—Guam Environmental Protection Agency, Harmon Plaza, Agana, Guam 96910 (671) 646–8864
Hawaii—Hawaii State Department of Health, Pollution Technical Review Branch, 645 Halekauwila Street, Honolulu, Hawaii 96813 (808) 548–6410
Idaho—Idaho Operation Office, EPA, 422 W. Washington Street, Boise, Idaho 83702 (208) 334–1450
Illinois—Permits Section, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706 (217) 782–0610
Indiana—Indiana State Board of Health, Division of Water Pollution Control, Room A–320, 1330 West Michigan Street, Indianapolis, Indiana 46206 (317) 633–0795
Iowa—Department of Environmental Quality, Henry A. Wallace Building, 900 E. Grand, Des Moines, Iowa 50313 (515) 281–8863
Kansas—Donald R. Carlson, Kansas Department of Health and Environment, Building 740—Forbes Field, Topeka, Kansas 66620 (913) 862–9360

Kentucky—Bureau of Environmental Protection (Water), 14 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601 (502) 564–3410

Louisiana—Louisiana Department of Natural Resources, Water Pollution Control Division, 625 North 4th Street, Baton Rouge, Louisiana 70804 (504) 342–6363

Maine—Steve Groves, Maine Department of Environmental Protection, Hospital Road, Augusta, Maine 04333 (207) 289–2591

Maryland—William E. Chicca, Office of Environmental Programs, Waste Management Administration, 201 West Preston Street, Baltimore, Maryland 21201 (301) 383–5670

Massachusetts—Massachusetts Division of Water Pollution Control, 110 Tremont Street, Boston, Massachusetts 02108 (617) 727–3855

Michigan—Water Quality Division, Michigan Department of Natural Resources, Stevens T. Mason Building, Lansing, Michigan 48909 (517) 373–8088

Minnesota—Randy D. Burnyeat, Minnesota Pollution Control Agency, Water Quality Division, Permits Section, 1935 West County Road B–2, Roseville, Minnesota 55113 (612) 296–7228

Mississippi—Mississippi Department of Natural Resources, Bureau of Pollution Control, 2380 Highway 80 West at Southport Mall, Jackson, Mississippi 39209 (601) 961–5171

Missouri—Missouri Department of Natural Resources, Division of Environmental Quality, Water Pollution Control Program, 2010 Missouri Boulevard, Jefferson City, Missouri 65101 (314) 751–3241

Montana—Montana Department of Health and Environmental Sciences, Water Quality Bureau, Cogswell Building, Helena, Montana 59601 (406) 449–2406

Nebraska—Nebraska Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509 (402) 471–2186

Nevada—Nevada Division of Envirionmental Protection, 201 South Fall Street, Room 221, Carson City, Nevada 89710 (702) 885–4670

New Hampshire—New Hampshire Water Supply and Pollution Control Commission, Hazen Drive, Concord, New Hampshire 03301 (603) 271–3503

New Jersey—New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625 (609) 292–6220

New Mexico—New Mexico Environmental Improvement Division, Water Pollution Control Bureau, 725 St. Michaels, Santa Fe, New Mexico 87503 (505) 827–5271

New York—New York Department of Environmental Conservation, Division of Water, Room 306, 50 Wolf Road, Albany, New York 12233 (518) 457–1067

North Carolina—Permits and Engineering Branch, North Carolina Division of Environmental Management, Room 912, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611 (919) 733–7120

North Dakota—Division of Water Supply and Pollution Control, North Dakota State Department of Health, 1200 Missouri Avenue, Bismarck, North Dakota 58505 (701) 224–2354

Ohio—Ann Galli, Librarian, Environmental Technical Information Center, Ohio EPA, 361 E. Broad Street, Columbus, Ohio 43216 (614) 466–6058

Oklahoma—Office of Water Resources Board, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73105 (405) 271–2555

Oregon—Oregon Department of Environmental Quality, Second Floor, 522 South West 5th Avenue, Portland, Oregon 97204 (503) 229–5325

Pennsylvania—Ernest P. Giovannitti, Chief, Division of Permits & Compliance, Bureau of Water Quality Management, Pennsylvania Department of Environmental Resources, 12th Floor, Foulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120, (717) 787–8184

Puerto Rico—Mr. Weems Clevenger, EPA Caribbean Field Office, Stop 8½, Avenue Fernandez Juncos, San Juan, Puerto Rico 00902, (809) 725–7825

Rhode Island—James Fester, Division of Water Resources, Rhode Island Department of Environmental Management, Room 209, 75 Davis Street, Providence, Rhode Island 02908, (401) 277–2234

South Carolina—R. Lewis Shaw, Bureau of Wastewater & Stream Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 758–3877

South Dakota—Steve Pirner, Office of Water Quality, South Dakota Department of Water and Natural Resources, Room 413, Joe Foss Building, Pierre, South Dakota 57501, (605) 773–4523

Tennessee—Paul E. Davis, Manager, Permits Section, Tennessee Department of Public Health, Division of Water Quality Control, 150 9th Avenue North, Nashville, Tennessee 37203, (615) 741–7883

Texas—Texas Department of Water Resources Library, Room 511, Stephen F. Austin Building, 1700 North Congress, Austin, Texas, (512) 475–7896

Trust Territories—Nachsa Siren, Executive Director, Environmental Protection Board, Trust Territory of the Pacific Islands, Saipan, Mariana Islands 96950

Utah—Steve McNeil, State of Utah, Bureau of Water Pollution Control, Room 410, 150 W. North Temple, Salt Lake City, Utah 84110, (801) 533–6146

Vermont—Vermont Agency of Environmental Conservation, 81 River Street, Montpelier, Vermont 05602, (802) 828–3345

Virgin Islands—Division of Natural Resources Management, Building 129, Sub Base, St. Thomas, Virgin Islands 00801, (809) 774–6420

Virginia—Larry G. Lawson, State Water Control Board, 2111 N. Hamilton Street, Richmond, Virginia 23230, (804) 257–6361

Washington—State of Washington Department of Ecology, St. Martins College Campus, Olympia, Washington 98504, (206) 753–3864

West Virginia—Water Resources Division, West Virginia Department of Natural Resources, 1201 Greenbrier Street, Charleston, West Virginia 25311, (304) 348–7861

Wisconsin—Paul Didier, Wisconsin Department of Natural Resources, 101 S. Webster Street, Madison, Wisconsin 53707, (608) 266–0289

Wyoming—John F. Wagner, Wyoming Department of Environmental Quality, Water Quality Division, 401 West 19th Street, Cheyenne, Wyoming 82002, (307) 777–7781

Comments on the Treatability Manual should be submitted to: William A. Cawley, Industrial Environmental Research Laboratory, U.S. Environmental Protection Agency, 26 West St. Clair, Cincinnati, Ohio 45268

FOR FURTHER INFORMATION CONTACT: William A. Cawley, Industrial Environmental Research Laboratory, U.S. Environmental Protection Agency, 26 West St. Clair, Cincinnati, Ohio 45268, (513) 684–4310.

SUPPLEMENTARY INFORMATION: On August 14, 1980, EPA published a notice in the **Federal Register** which announced the availability of the Treatability Manual and solicited comments on the Manual. The same notice announced that EPA planned to publish either an annual supplement or a revision to incorporate up-to-date information and useful changes into Manual. Today's **Federal Register** notice announces the availability of the first revision of Volumes I, II, III, and V of the Treatability Manual. For ease of

reproduction and cost-saving, this revision of the Treatability Manual will be made available in a loose-leaf format. This notice also contains a summary of technical comments received on the first edition of the Treatability Manual.

The first edition of the Treatability Manual consisted of five volumes:

Volume I—Treatability Data
Volume II—Industrial Descriptions
Volume III—Technologies
Volume IV—Cost Estimating (deleted in 1981 edition)
Volume V—Summary

Volume I is a compendium of physical, chemical, biological, and treatability data on the toxic or "priority" pollutants. Volume II contains descriptive information on numerous industrial categories. Volume III summarizes performance data on existing pollutant treatment technologies. Volume IV provides capital, operating, and maintenance cost estimates for these treatment technologies (Volume IV Has been deleted from the 1981 edition of the Treatability Manual. A new edition of Volume IV will be noticed in the **Federal Register** as soon as it is completed). Volume V provides supplementary information designed to assist users of the Treatability Manual. For more detailed explanation of the genesis of the Manual, its data sources, its uses and limitations, see August 14, 1980 **Federal Register** (45 FR 54135).

As described in the August 14, 1980 **Federal Register**, the Agency expects to update the Manual as additional data become available. At the present time, EPA plans to revise the Manual by publishing annually either a supplement, or as was done this year, a revised Manual. Each supplement or revision will consist of changes resulting from public comments as well as newly acquired data. The Agency also believes that the Manual can be improved and important issues resolved by soliciting public comments on the Manual's content and format. Therefore, the Agency welcomes any data or comments of a technical nature that might improve the quality of the Manual. The Agency will accept written technical comments on the Manual at any time. However, in order for comments to be considered for inclusion in the next supplement or revision, comments must be received no later than June 1, 1982. Comments received after this date will be reviewed and considered for the following supplement or revision.

As stated in the August 14, 1980 **Federal Register** notice, written technical comments on the Treatability Manual, received by April 1, 1981, would be considered during the first revision of the Manual. The comments received by April 1, 1981, consisted of both detailed comments on specific pages and sections of the Manual and more general areas of concern over the Manual's content. The detailed comments, while too numerous to list here, have been of great assistance in preparing the first revision of the Manual. The broader issues addressed in the comments are summarized here.

One concern expressed by several commenters was the need for an improved data base from which to draw information included in the Treatability Manual. This general comment was divided into a number of specific areas of concern including: The current practice of including screening data in the Manual; inclusion of data from pilot and bench-sale studies and from Draft, rather than Final, Effluent Guidelines Development Documents; quality assurance/quality control (QA/QC) procedures for sampling and analytical protocols; information on design criteria and operating conditions; quantity and representatives of data within each industrial category; and absence of information on several industrial categories.

The first two concerns—the inclusion of screening data and data from pilot- and bench-scale studies and Draft Development Documents—have been addressed in the first revision of the Manual by identifying the type and source of the data as clearly as possible so that Manual users are aware of specific limitations of data sets included in the Manual. A new section in Volume V provides the information available on the methods used to acquire the data in each data set. Furthermore, future revisions of the Manual will replace screening data with more recently acquired data sets as developed by the Agency and as submitted by industry, academia, or other interested parties.

Quality control/quality assurance procedures were discussed in detail in the comments received on the Manual. Of greatest concern was the absence of information on recovery values in the first edition of the Manual. This comment has been addressed in two ways in the first revision of the Manual. First, new data have been included and original data revised in their recovery-corrected form, wherever possible. Secondly, as indicated earlier, a new section has been incorporated into Volume V to outline the sampling and analytical methodologies used for each industrial category so that Manual users can assess the precision and accuracy of the data presented.

Lack of information on design criteria and operating conditions was another concern expressed by commenters. Because of the importance of a treatment system's design criteria and operating conditions to its specific performance characteristics, such information was included in the Manual, whenever possible, and the format of Volume III has been revised for clearer presentation of these parameters. As, in many cases, it has not yet been possible to identify these parameters from the original references, future revisions of the Manual will focus on identifying additional data for which design criteria and operating conditions are more readily available.

Several commenters discussed the quantity and representativeness of data presented for each industrial category. In some cases, the comments concerned references used during the development of the first edition of the Manual. The 1981 edition of the Manual includes data from the revised references where they have been completed, and future editions of the Manual will be updated to reflect the most recent references possible. Particular focus will be put on incorporating data from Final Development Documents as they become available.

Another concern over quantity and representativeness of data was the Manual's lack of discussion on sample period. As mentioned previously, Volume V of the 1981 edition contains a section describing the sampling and analytical protocols used by the Agency to characterize waste streams and wastewater treatment performance for each industrial category. Other comments focused on the aggregation of data across industries in Appendices B, C, and D of volume V. Because of this strong concern that these summary tables might be misused to characterize wastewater treatment performance at a specific facility, Appendices B, C, and D have been deleted from the 1981 edition of the Manual.

A final comment on the data base used in the development of the Manual was the absence of information on several industrial categories—in particular, the Organic Chemicals/ Plastics and Synthetic Fibers industry. Informaton on several industrial categories have been added to the Manual for the 1981 edition, including the Battery Manufacturing, Metal Finishing, Aluminum Forming, Electrical and Electronic Components, and Photographic Equipment and Supplies industries. While the Draft Development

Document for the Organic Chemicals/ Plastics and Synthetic Fibers industry was not published at the time of the final draft of the 1981 Manual, preliminary information on the industry has also been included. During the next revision of Manual, the information on this industry will be expanded and new information on the Copper Forming, Plastics Processing, Adhesives and Sealants, and Pesticides Manufacturing industries will be included.

In addition to comments directed toward the data used in developing the Manual, other general comments addressed the presentation of these data. For example, one commenter noted that "mean" and "median" were frequently interchanged and "less than" symbols omitted. These errors have been corrected in the 1981 edition and a discussion of "less than" values, not detected (ND), and below detection limits (BDL) has been included in the Manual.

An additional term, called "not meaningful" (NM), was introduced to characterize the application of certain statistical methods to the data. For example, in a table presenting the mean removal efficiencies for a given compound using various types of treatment systems, the data for one type of treatment might have been available for only two plants—one of which indicates a removal efficiency of less than 50% and the other, of greater than 90%. At best, any number presented as the mean of these values would be misleading. The term "not meaningful" has been used instead.

Another commenter was concerned about the potential misuse of the carbon isotherms (in Volume I) because the values are presented for pure compounds. These values have been retained in the 1981 edition because, while virtually all physical constants are susceptible to matrix effects, these data can, in the hands of a knowledgeable user, contribute to an understanding of the behavior of compounds in a more complex environment.

A final comment raised addressed the potential use of the Treatability Manual. While the Manual itself is simply a compendium of available information on priority pollutants in industrial wastewater, a concern was expressed over the manner in which the Manual might be used by NPDES permit writers writing case-by-case best professional judgement (BPJ) permits. Much concern was expressed over the possibility of unwarranted total dependence on the Manual during permit development. One commenter sugguested that explicit instructions be given permit writers as to how to use the Manual in writing BPJ permits. Other commenters opposed such instructions and, in particular, criticized the sample "Stepwise Approach for Using the Manual" (discussed in Section V.3.2. of Volume V of the first edition) as potentially misleading Manual users into assuming this is the recommended approach. As the Agency neither intends nor encourages use of the Manual to be the sole basis for establishing BPJ permit limits, Section V.3.2. has been deleted to avoid confusion on this issue. Additionally, as the Manual has been and will be used for a variety of purposes (90% of recipients of the 1980 edition of the Manual were *not* permit writers), the entire Section V.3 "Guidance for Use," has been deleted from the 1981 edition.

Dated: December 22, 1981.

Bruce R. Barrett,

Acting Assistant Administrator for Water.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

January 13, 1982.

[FR Doc. 82-2347 Filed 1-28-82; 8:45 am]

BILLING CODE 6560-29-M

[ER-FRL-2038-7]

Availability of Environmental Impact Statements Filed

Responsible Agency: USEPA, Office of Federal Activities.

Information Contact: Ms. Kathi Wilson.

EISs Filed: January 18–22, 1982.

Comment Due Dates: Drafts—March 15, 1982. Finals—March 1, 1982.

Corps of Engineers (COE): Final—Waimea River Flood Control Study, Kauai County, Hawaii (EPA EIS #820024)

COE: Final Supplement—Cresent City Inner Harbor Basin and Entrance Channel, Del Norte County, California (EPA EIS #820032)

DOI: Bureau of Land Management (BLM): Draft—Twin Falls Livestock Grazing Management Program, Twin Falls County, Idaho; EXTENDED REVIEW 3–26–82 (EPA EIS #820028)

DOI: BLM: Draft—Eastside Salem Ten-Year Timber Management Plan, Multnomah and Linn Counties, Oregon; EXTENDED REVIEW 3–23–82 (EPA EIS #820031)

DOI: National Park Service: Final—Great Smokey Mountains National Park General Management Plan, North Carolina and Tennessee (EPA EIS #820023)

DOT: Federal Highway Administration (FHWA): Final—I–95 Upgrading, Yarmouth to Freeport, Cumberland County, Maine (EPA EIS #820022)

DOT: FHWA: Final—I–84/Columbia River Highway, NE 117th Avenue to NE 181st Avenue, Multnomah County, Oregon (EPA EIS #820027)

Department of Housing and Urban Development (HUD): Draft—Rio Rancho Subdivision, Mortgage Insurance, Sandoval County, New Mexico (EPA EIS #820025)

USDA: Forest Service: Draft—Mt. Emmons Molybdenum Mining and Milling Project, Permit, Gunnison County, Colorado; EXTENDED REVIEW 3–20–82 (EPA EIS #820034)

USDA: Rural Electrification Administration (REA): Draft Supplement—Escalante Generating Station, Waters Sources, McKinley County, New Mexico (EPA EIS #820030)

USDA: REA: Final—Chatom to Waynesboro 230 kV Transmission Intertie, Alabama and Mississippi (EPA EIS #820029)

General Services Administration: Final—Chula Vista Border Patrol Station and Staging Area, San Diego County, California (EPA EIS #820033)

Nuclear Regulatory Commission: Draft—Wolf Creek Generating Station Unit No. 1, Operating License, Coffey County, Kansas (EPA EIS #820026)

CORRECTIONS: DOI: Bureau of Reclamation: Draft—Acreage Limitation, Reclamation Act of 1902—published FR 7–31—published erroneous extension in FR 1–15–82; DUE 3–5–82 (EPA EIS #810015)

DOI: Fish and Wildlife Service: Final—Redhead Waterfowl Production Wetlands Preservation, Idaho—published FR 1–8–82 with erroneous state designation (EPA EIS #811042)

Dated: January 26, 1982.

Paul C. Cahill,

Director, Office of Federal Activities

[FR Doc. 82-2389 Filed 1-28-82; 8:45 am]

BILLING CODE 6560-38-M

[ER-FRL-2038-7]

EPA Comments on Environmental Impact Statements and Other Actions Impacting the Environment—Availability of Report

AGENCY: Office of Federal Activities (A-104), Environmental Protection Agency (EPA).

SUMMARY: Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, EPA has reviewed and commented in writing on Federal

Agency actions impacting the environment. A report which identifies EPA's comments released during December 1981 is being prepared and is available upon request. To obtain a copy of this report you should contact: Management Information Unit, Office of Federal Activities (A–104). U.S. Environmental Protection Agency, Washington, D.C. 20460.

Dated: January 26, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82–2390 Filed 1–28–82; 8:45 am]

BILLING CODE 6560–37–M

[OPTS–51345A; TSH–FRL–2038–2]

Mono-azo Dyes; Premanufacture Notices; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notices (PMN's) PMN 81–558, PMN 81–559, and PMN 81–561, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on April 26, 1982. The PMN's were submitted for three water-soluble, fiber-reactive, mono-azo dyes which will be imported by a company which has claimed its identity to be confidential.

FOR FURTHER INFORMATION CONTACT: Rachel Diamond, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–221, 401 M Street, SW., Washington, DC 20460 (202–382–3743).

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of TSCA anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a premanufacture notice (PMN) to EPA 90 days prior to commencment of manufacture or import. Under section 5(c) EPA may extend the notice period for good cause for additional periods, not to exceed an aggregate of 180 days from the date of receipt. EPA issued proposed rules to implement the premanufacture notification program in the Federal Register of January 10, 1979 (44 FR 2263). Section 720.35 of the proposed rules addressed the section 5(c) extension authority and provided examples of situations in which the Agency believed there would be good cause to extend the notice period.

Review to Date

On October 29, 1981 EPA received three PMN's from a confidential submitter who intends to import the following chemical substances:

1. PMN 81–558: 4-Hydroxy-3-[5-(2-hydroxysulfonyloxy) ethylsulfonyl)-2-methoxyphenylazo)-7-succinylamino-2-naphthalenesulfonic acid disodium salt.
2. PMN 81–559: 5-Acetylamino-4-hydroxy-3-[2-hydroxy-4-[2-(hydroxysulfonyloxy) ethylsulfonyl[-5-methylphenylazo)-2,7-napthalenedisulfonic acid, trisodium salt, copper complex.
3. PMN 81–561: 4-[4-[2-(Hydroxysulfonyloxy ethylsulfonyl] 5-methyl-2-methoxphenylazo]-3-methyl-1-(3-sulfophenyl)-5-pyrazolone disodium salt.

Notice of receipt of these PMN's was published in the Federal Register of November 6, 1981 (46 FR 55145).

The PMN's stated that the substances would be used as fiber reactive dyes for cellulosic fabrics, such as cotton and wool. Maximum volume imported in the third year of commercialization is estimated to be 10,000 to 15,000 kilograms (kg). The original 90-day review period was scheduled to expire on January 26, 1982.

In its evaluation of the substances described in PMN 81–558, PMN 81–559, and PMN 81–561, EPA reviewed information provided by the submitter, as well as that which was obtained from the relevant technical literature. Substances similar in chemical structure to the three PMN substances were also examined.

EPA's detailed analysis addressed the following: process chemistry, environmental fate, dermal absorption, metabolic pathways, effects on human health, human exposure, release to the environment, degree of risk relative to available commercial substitutes, and testing required to resolve any outstanding issues.

As a result of this analysis, EPA has found the following:

1. The substances described in PMN 81–558 and PMN 81–561 are expected to undergo azo reduction to produce analogues of ortho-anisidine and para-cresidine, respectively. Both of these substances are known to cause cancer in laboratory animals. Additionally, substances PMN 81–558 and PMN 81–559 may release analogues of beta-naphthylamine if azo-reduction occurs. Beta-naphthylamine is also a known carcinogen.
2. Significant occupational exposure can occur during weighing and mixing of these dyes prior to use in dyeing operations.
3. It is possible that dye house effluent may contaminate drinking water supplies, as these dyes are not expected to biodegrade in the environment.

Extension of the Review Period

Based on its analysis to date, EPA finds that there is a significant possibility that the substances submitted for review in PMN 81–558, PMN 81–559, and PMN 81–561 may be regulated under section 5(e) of TSCA. The Agency requires an extension of the review period to evaluate the need for additional data on the three substances, to examine its regulatory control options, and to prepare the necessary documents should regulatory action be required. An administrative order under section 5(e) if required or adopted as an Agency option, must be issued no later than 45 days prior to expiration of the review period. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to April 26, 1982.

Public Record

PMN's PMN 81–558, PMN 81–559, and PMN 81–561 are available for public inspection in Room E–106, at the EPA Headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday. The identity of the submitter has been keep confidential and has been deleted from the documents in the public record.

Dated: January 21, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82–2348 Filed 1–28–82; 8:45 am]

BILLING CODE 6560–31–M

[ER–FRL–2038–7]

Intent To Prepare Two Environmental Impact Statements (EISs)

AGENCY: Environmental Protection Agency, Regions V and VI.

SUMMARY: Pursuant to EPA, regulations for the preparation of EISs (40 CFR Part 6), EPA is preparing Draft EISs for the following projects:

Middle East Fork Planning Area, Region V

The Chicago Regional Office plans to prepare an EIS on a proposed project to address the wastewater treatment needs of the Middle East Fork planning area, Clermont County, Ohio. A scoping meeting has been scheduled for Tuesday, February 9, 1982 at 7:00 pm at the Cincinnati Gas and Electric Building, 92 South Fourth Street in Batavia. For further information, contact Mr. Gene

Wojcik, Chief, EIS Section, Water Division, U.S. Environmental Protection Agency, Region 5, 230 South Dearborn Street, Chicago, Illinois (telephone 312/353–2157).

Castor Bayou Project, Region VI

The Dallas Regional Office plans to prepare an EIS on the proposal to issue a new source NPDES permit to the Louisiana Division of Dow Chemical USA for discharge of wastewater from the Castor Bayou Project. The project includes a surfac lignite mine and associated facilities to be located in Desoto Parish, Lousiana. A scoping meeting will be held on March 4, 1982 at 7:30 pm at the Logansport High School Auditorium on Gum Street in Logansport, Louisiana. For further information, contact Mr. Clinton Spotts, Regional EIS Coordinator, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas, 75270 (telephone: 214/767:2716 or 8/729–2716).

Dated: January 26, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82–2392 Filed 1–28–82; 8:45 am]

BILLING CODE 6560–37–M

[ER–FRL–2038–7]

Revised Notice of Intent To Merge/Cancel Environmental Impact Statements (EISs)

AGENCY: Environmental Protection Agency, Region VII.

CONTACT: Mr. Edward Vest, EIS Coordinator, U.S. EPA, Region VII, 324 East 11th St., Kansas City, Missouri 64106 (Telephone 816–374–2921 or 8–758–2921).

SUMMARY: EPA Region VII intends to revise its intent to prepare individual EISs on the grant assistant projects for wastewater treatement systems located in the Halfday Creek Planning area, Shawnee County and Metropolitan Topeka study area, both located in Kansas. Currently, EPA intends to combine the study areas and prepare a single EIS in order to eliminate duplication of effort. Therefore, this Notice revises the public notice dated August 14, 1978 on the Halfday Creek proposal and the **Federal Register** notice published on March 11, 1981 (45 FR 16129) for the Metropolitan Topeka proposal. Publication of the Metro-Topeka draft EIS is expected on June 1982. All parties wishing to comment on this revision or desiring additional information should contact the person identified above.

Additionally, EPA Region VII intends to cancel the preparation of the EIS for Osage Beach-Lake Ozark, Missouri wastewater treatment and collection facilities. The Notice of Intent published in the September 11, 1981 **Federal Register** (46 FR 45411) is hereby cancelled. Notification has been sent to state and local officials.

Dated: January 26, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82–2391 Filed 1–28–82; 8:45 am]

BILLING CODE 6560–37–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 81–918, Transmittal No. 325]

RCA American Communications, Inc., Revisions to Tariff F.C.C. No. 2; Memorandum Opinion and Order Instituting Investigation

Adopted: December 31, 1981.

Released: January 19, 1982.

1. Before the Bureau are petitions filed by Transponder Corporation of Denver, Inc. (TCD) and American Satellite Corporation (ASC) requesting that we reject or alternatively suspend and investigate revisions to Tariff F.C.C. No. 2 filed by RCA American Communications, Inc. (RCA Americom) under the above-captioned transmittal. [1] By these revisions, scheduled to become effective January 4, 1982, RCA Americom proposes to increase rates for two leased channel voice grade service offerings, classified as Type A and type D, provided via satellite to other common carriers (OCCs). For reasons explained below, we have decided to set revisions for investigation. We also will suspend their effectiveness for an additional ninety days.

Background and Contentions of the Parties

2. By way of background, Type A service is an offering to an OCC of at least sixty (60) channels between RCA Americom operating centers. The OCC must provide connecting channels, local channels and associated terminal equipment. The Type D service offering involves a minimum of sixty (60) channels from any of RCA Americom's operating centers to an OCC-provided operating center or earth station in Denver, Colorado. As is the case with Type A service, the user must provide its own connecting and local channels. Unlike that service, however, a subscriber of Type D service has the option of either using its own associated terminal equipment or obtaining it from RCA Americom. Moreover, in contrast to Type A service, where the minimum service term is one year, an OCC must subscribe to Type D service for a minimum of three years. The current charge for Type D service ranges from $330 to $370 per channel per month, depending upon customer usage, while a Type A subscriber is now charged $500 per channel per month. Under the revisions at issue here, RCA Americom would increase these rates to $600 per channel per month for each service offering.

3. TCD asserts initially that the proposed revisions are unreasonable in violation of Section 201(b) of the Act, 47 USC § 201(b). This is so, it says, because RCA Americom would establish the same rate for two services despite the fact that each is composed of different cost components. It points out that an OCC taking Type D service provides its own earth station and associated operating center equipment at one end while RCA Americom provides these facilities to its Type A service customers. Thus, the provision of Type D service is alleged to be less costly than Type A service and should be priced accordingly. Indeed, in TCD's view, these lower costs are properly reflected in the current rate differential between these services.

4. TCD also complains that it was led to believe that the current rates for Type D service were to be effective for an initial three-year period beginning in January, 1980. Since RCA Americom seeks to change the rates after only two years, it must, asserts TCD, demonstrate substantial cause under the standard established by the Commission in *RCA Americom*, 86 F.C.C. 2d 1197 (1981). This, TCD claims, RCA Americom has

[1] ASC seeks suspension and investigation only; however, it also requests that the Commission extend the effective date of the tariff for 90 days due to RCA Americom's alleged failure to provide notice of these revisions to its customers as required by Section 61.58 of the Commission's Rules, 47 CFR 61.58. Since we have decided to suspend these revisions for ninety days on other grounds, we need not address the merits of this issue. TCD has also filed a "Reply and Further Response" accompanied by a "Motion for Acceptance of Supplemental Pleadings," which RCA Americom opposes. We note that § 1.773 of the Rules, 47 CFR 1.773, the applicable provision for challenges to tariff filings, provides only for petitions and replies. Section 1.45(c), 47 CFR 1.45(c) provides that additional pleadings may be filed if specifically requested or authorized by the Commission. Memorandum Opinion and Order, FCC 80–526, released September 18, 1980. Since neither the Commission nor the Bureau has requested additional pleadings and since the pleading does not raise issues which warrant waiver of the rules, we deny TCD's "Motion for Acceptance of Supplemental Pleading." Also before the Bureau is RCA Americom's opposition and reply.

not done. In fact, according to TCD, the Section 61.38 data provided by RCA Americom is cursory and inadequate at best. TCD further contends that the magnitude of the proposed increase for Type D service of 62 to 73 percent is unlawful especially when compared to the 20 percent increase proposed for Type A service. Such disparate rate treatment is said to be unjustly discriminatory under Section 202(a) of the Act, 47 USC § 202(a).

5. For its part, ASC, a user of Type A service, requests that the Bureau suspend the proposed revisions in order to investigate whether there is a revenue shortfall associated with RCA Americom's provision of Type B service, another leased voice grade channel service provided to OCCs via satellite for which rate increases have not been proposed. ASC argues that it would be unjustly discriminatory for RCA Americom to limit the increase to Type A and D service users if the earnings from Type B service were found to be inadequate.

Discussion

6. We note initially that Type D service is different from Type A service in that the customer provides the terrestrial facilities at one end. In fact, RCA Americom does not contend otherwise.[2] Rather, it claims that despite the difference, its cost of providing the two services is approximately the same. The issue, then, is whether RCA Americom has provided sufficient justification to support this claim.

7. We think not. The data it has provided do not established that the costs for Type A and Type D servics are so similar as to justify equivalent rates. Indeed, the support data which accompanied the filing do not even show separately the costs for Type A and Type D services. RCA Americom argues that it did submit such disaggregated cost data as an attachment to its opposition; however, our examination convinces us that this information is cursory at best and fails to break out, in sufficient detail, the respective costs incurred in the provision of each of these services.

8. For example, RCA Americom states that it provides additional equipment to Type D service users not provided in conjunction with the Type A service offering. However, this statement does not establish RCA Americom's point that the costs of Type A and Type D services are equivalent especially since a Type D service customer provides its own earth station.[3] In fact, other than showing the total common and dedicated investment figures for Type A and Type D service individually, the carrier has not provided the costs of the specific equipment which comprise this investment.

9. Aside from the deficiences in cost support for the terrestrial portion of this offering, RCA Americom has also changed the space segment costing methodology used to develop its current rates.[4] As we understand it, RCA Americom would allocate a greater percentage of transponder costs to Type D service than previously assigned. However, it has not demonstrated that the volume of traffic has increased or that its operating procedures have changed.[5] We therefore will require RCA Americom to justify this new methodology in its direct case.[6]

10. Given the seriousness of these deficiences, the Bureau has determined to suspend these rate increases for an additional ninety days while they are investigated.[7] RCA Americom will be expected to submit its direct case within 20 days of the release of this order. We will provide interested parties 10 days thereafter in which to submit their responses, and RCA Americom will be provided an additional 5 days in which to file its reply.

11. Accordingly, it is ordered that, pursuant to authority delegated in § 0.291 of the Commission's Rules, 47 CFR 0.291, and pursuant to Sections 4(i), 4(j), 201, 202, 203, 204, 205, and 403 of the Communications Act, 47 U.S.C. Sections 154(i), 201, 202, 203, 204, 205, and 403, an investigation is instituted into the lawfulness of the revisions to RCA American Communications Tariff FCC No. 2 filed under Transmittal No. 325.

12. It is further ordered, that Transponder Corporation of Denver, Inc., and American Satellite Corporation shall be parties to this proceeding. Any other interested persons who which to participate as parties may do so by filing comments in reponse to RCA Americom's direct case.

13. It is further ordered, that RCA Americom shall submit its direct case within 20 days of the release of this order. Other parties may file their reply cases or comments within 10 days thereafter. RCA Americom may file its response within 5 days thereafter.

14. It is further ordered, that the above tariff revisions are suspended for a period of 90 days.

15. It is further ordered, that the petitions to reject, or in the alternative, to suspend and investigate the above revisions are granted to the extent indicated and otherwise are denied.

16. It is further ordered, that this action is effective immediately.

17. It is further ordered, that the Secretary shall cause this Memorandum Opinion and Order to be published in the **Federal Register.**

Federal Communications Commission.

Jack D. Smith,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 82-2351 Filed 1-28-82; 8:45 am]

BILLING CODE 6712-01-M

[2] Opposition p. 4. See also RCA American Communications, Inc. Revisions to Tariff F.C.C. No. 2 (released June 24, 1980) paragraph 12.

[3] It also maintains that the dedicated equipment at its own earth stations which operates with TCD's facilities at Denver is "smaller" than the equipment used in connection with its Type A service offering and is therefore "less efficient." It has, however, failed to demonstrate that similar equipment used at its other earth station, particularly in small cities, is any more efficient.

[4] See RCA American Communications, Inc., Transmittal No. 138 (April 11, 1979).

[5] The data RCA Americom has provided in this regard shows that its revenue requirement for the space segment for 1982 is $1,095,000, more than double the revenue requirement of $478,800 set forth in its original filing; for 1983, it now claims a revenue requirement of $1,252,000 as compared to a revenue requirement of $598,000 set forth previously.

[6] We will also require it to expain why the space segment costs for Type D service has been allocated on the basis of the size of the equipment at its earth station as opposed to an allocation on the basis of the number of channels forecasted, as it has done for Type A service.

[7] The scope of the investigation will not include the costs and revenues associated with Type B service as ASC requests. As we have previously found, RCA Americom is under no duty to increase its rate for all its voice grade services at one time. Nor does a failure to do so create an inference of unlawfulness. See *RCA American Communications, Inc., supra* at paragraph 12.

FEDERAL RESERVE SYSTEM

ABC Bancshares, Inc.; Formation of Bank Holding Company

ABC Bancshares, Inc., McAlester, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 98.2 percent or more of the voting shares of American Bank of Commerce, McAlester, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2305 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Benbrook Bancshares, Inc.; Formation of Bank Holding Company

Benbrook Bancshares, Inc., Fort Worth, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Benbrook State Bank, Fort Worth, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2304 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Broadway Bancshares, Inc.; Formation of Bank Holding Company

Broadway Bancshares, Inc., San Antonio, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Broadway National Bank, San Antonio, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 17, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2317 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Broadway Capital Corp.; Formation of Bank Holding Company

Broadway Capital Corp., Chelsea, Massachusetts, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Broadway National Bank of Chelsea, Chelsea, Massachusetts. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 17, 1982. Any comment on an application that requests a hearing must include a statement of why a writtten presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2303 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

CBC Bancorp, Ltd.; Formation of Bank Holding Company

CBC Bancorp, Ltd., Chicago, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Capitol Bank and Trust of Chicago, Chicago, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2302 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Central Bancorporation, Inc., et al.; Acquisition of Bank

Central Bancorporation, Inc., Central Colorado Company and C.C.B., Inc., all of Denver, Colorado, have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of the successor by merger to Centennial Bank of Pueblo, Pueblo, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a writtten presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2318 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Community Bankshares, Inc.; Acquisition of Bank

Community Bankshares, Inc., Cornelia, Georgia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of Northeastern Banking Company, Commerce, Georgia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 12, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2319 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Detroitbank Corp.; Acquisition of Bank

Detroitbank Corporation, Detroit, Michigan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to aquire 100 percent of the voting shares of the successor by merger to the Huron Valley National Bank, Ann Arbor, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 17, 1982. Any comment on an application that requests a hearing must include a statement of why a writtten presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2320 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Dewey County Bancorporation, Inc.; Formation of Bank Holding Company

Dewey County Bancorporation, Inc., Taloga, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Dewey County State Bank, Taloga, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any persons wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2301 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Earners and Savers Bancorporation; Formation of Bank Holding Company

Earners and Savers Bancorporation, Galena Park, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company be acquiring 100 percent of the voting shares of Galena Park State Bank, Galena Park, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comments on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2306 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

First Eastern Corp.; Formation of Bank Holding Company

First Eastern Corporation, Wilkes-Barre, Pennsylvania, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of First Eastern Bank, N.A., Wilkes-Barre, Pennsylvania. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comments on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2307 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Hammond Bancshares, Inc.; Formation of Bank Holding Company

Hammond Bancshares, Inc., Hammond, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of The State Bank of Hammond, Hammond, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 20, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2308 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Metropolitan National Bancshares, Inc.; Formation of Bank Holding Company

Metropolitan National Bancshares, Inc.; Little Rock, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Metropolitan National Bank, Little Rock, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2311 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Northern Trust Corp.; Acquisition of Bank

Northern Trust Corporation, Chicago, Illinois, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of the successor by merger to O'Hare Banc Corp., Chicago, Illinois, and thereby indirectly acquire 100 per cent (less directors' qualifying shares) of O'Hare International Bank, Chicago, Illinois. The factors that are considered in acting on the application are set forth in section (3)(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 20, 1982. Any comment on an applicant that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2321 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Old Second Bancorp, Inc.; Formation of Bank Holding Company

Old Second Bancorp, Inc., Aurora, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent (less directors' qualifying shares) of the voting shares of the successor by merger to The Old Second National Bank of Aurora, Aurora, Illinois. The factors that are considered in acting on the application are set forth in section (3)(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2312 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Philadelphia National Corp.; Acquisition of Bank

Philadelphia National Corporation, Philadelphia, Pennsylvania, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent, less directors' qualifying shares, of the voting shares of The Philadelphia Bank (Delaware), Wilmington, Delaware. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842)c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 16, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2322 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Raymondville State Bancshares, Inc.; Formation of Bank Holding Company

Raymondville State Bancshares, Inc., Raymondville, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Raymondville State Bank, Raymondville, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842)c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application

that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2313 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Rockwall Financial Corp.; Formation of Bank Holding Company

Rockwall Financial Corporation, Rockwall, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Rockwall Bank, N.A., Rockwall, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2314 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

San Jose Banco, Inc.; Formation of Bank Holding Company

San Jose Banco, Inc., San Jose, Illinois, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 90 percent of more of the voting shares of San Jose Tri-County Bank, San Jose, Illinois. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 20, 1982. Any comment on an application that requests a hearing must include a statement of why a writtten presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2315 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

State Bank of India; Formation of Bank Holding Company

State Bank of India, Bombay, India, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of State Bank of India (California), Los Angeles, California. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2323 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

U.S. Bancorp.; Acquisition of Bank

U.S. Bancorp., Portland, Oregon, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Bank of Lake Oswego, Lake Oswego, Oregon, a proposed new bank. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not late than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a writtten presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2324 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

Wilburton State Bancshares; Formation of Bank Holding Company

Wilburton State Bancshares, Wilburton, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Wilburton State Bank, Wilburton, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 25, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2316 Filed 1-28-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Foster Poultry Farms

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Foster Poultry Farms is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of substantially all assets of The Grange Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: January 12, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requries persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–2352 Filed 1–28–82; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81M–0390]

CooperVision, Inc.; Premarket Approval of Permasol™ Cleaning, Rinsing, and Storage Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Permasol™ Cleaning, Rinsing, and Storage Solution for soft (hydrophilic) contact lenses sponsored by CooperVision, Inc., Mountain View, CA. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device has been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 1, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On March 4, 1981, CooperVision, Inc., Mountain View, CA, submitted an application for premarket approval of the Permasol™ Cleaning, Rinsing, and Storage Solution for all (soft) hydrophilic contact lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On December 2, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), soft contact lens solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lens solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the Permasol™ Cleaning, Rinsing, and Storage Solution states that the solution is designed for the cleaning, rinsing, and storage of all soft (hydrophilic) contact lenses. Sponsors of any soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution, at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor that fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorized any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA

action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 1, 1982, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-1970 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0003]

Medtronic Blood Systems, Inc.; Premarket Approval of the Hall-Kaster™ Prosthetic Heart Valve, Models A7700 and M7700

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Hall-Kaster™ Prosthetic Heart Value, Models A7700 and M7700, sponsored by Medtronic Blood Systems, Inc., Plymouth, MN. After reviewing the recommendation of the Circulatory Systems Devices Panel, FDA notified the sponsor that the application was approved for the Hall-Kaster™ Prosthetic Heart Valve, Models A7700 and M7700, because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 1, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Managment Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On June 29, 1979, Medtronic Blood Systems, Inc., Plymouth, MN, submitted to FDA an application for premarket approval of the Hall-Kaster™ Prosthetic Heart Valve, Models A7700 and M7700. The application was reviewed by the Circulatory Systems Devices Panel, an FDA advisory committee, which recommended approval of the application. On December 23, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 1, 1982, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-1971 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0004]

Professional Supplies, Inc.; Premarket Approval of The Soft Rinse ™ System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of The Soft Rinse™ System for all hydrophilic contact lenses, sponsored by Professional Supplies, Inc., Stevens Point, WI. The Soft Rinse™ System is intended for use in the preparation of 15 milliliters of normal saline (0.9 percent) solution to be used in heat disinfection of all hydrophilic contact lenses. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 1, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On October 9, 1980, Professional Supplies,

Inc., Stevens Point, WI, submitted to FDA an application for premarket approval of The Soft Rinse™ System for all hydrophilic contact lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On November 27, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), salt tablets for preparing solutions for use in heat disinfection of hydrophilic contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), such salt tablets are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or the solutions prepared from salt tablets for the above use comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of The Soft Rinse™ System states that the solution prepared from the salt tablets is designed for use in heat disinfection of all hydrophilic contact lenses. Sponsors of any hydrophilic contact lenses that have been approved for marketing are advised that whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution, at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new salt tablets that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a peititon for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 1, 1982, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–1972 Filed 1–28–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 81F–0413]

Borg-Warner Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Borg-Warner Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl) ester with triisopropanolamine as an antioxidant and/or stabilizer in polycarbonate in contact with food.

FOR FURHTER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3599) has been filed by Borg-Warner Chemicals, Inc., Technical Centre, Washington, WV 26181, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl) ester with triisopropanolamine as an antioxidant and/or stabilizer in polycarbonate in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: January 20, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82–2097 Filed 1–28–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 81F-0414]

Borg-Warner Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Borg-Warner Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl) ester with triisopropanolamine as an antioxidant and/or stabilizer in polyvinyl chloride and vinyl chloride copolymers in contact with food.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3598) has been filed by Borg-Warner Chemicals, Inc., Technical Centre, Washington, WV 26181, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,4-di-*tert*-butylphenyl) ester with triisopropanolamine as an antioxidant and/or stabilizer in polyvinyl chloride and vinyl chloride copolymers in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: January 20, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-2099 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Detroit District Office, Chaired by Alan L. Hoeting, District Director

Date: Tuesday, February 9, 1982, 9:30 a.m.
Address: George Potter Harrick Bldg., Conference Rm., 1560 E. Jefferson, Detroit, MI 48207.
For further information contact: Diane M. Place, Consumer Affairs Officer, Food and Drug Administration, 1560 E. Jefferson, Detroit, MI 48207, 313-226-6260.

Orlando District Office, Chaired by Adam J. Trujillo, District Director

Date: Thursday, February 11, 1982, 1:30 p.m.
Address: Hillsborough Community College, Dale Mabry Campus, Humanities Bldg., Rm. 118, 4001 Tampa Bay Blvd., Tampa, FL 33607.
For further information contact: Nellie Mendez, Consumer Affairs Officer, Food and Drug Administration, 6501 NW. 36th St., Suite 200, Miami, FL 33166, 305-526-2920.

Newark District Office, Chaired by Matthew H. Lewis, District Director

Date: Thursday, February 25, 1982, 10 a.m.
Address: Rutgers University, Labor Education Center, Cook Campus, New Brunswick, NJ 08903.
For further information contact: Lillie Dortch-Wright, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-3265.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-2100 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80F-0027]

Lonza, Inc.; Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of Citizen Petition OCP 3488, which requests that FDA reverse its determination that use of quaternary alkyl dimethylammonium compounds derived from olefin-based amines is permissible under § 178.1010 (21 CFR 178.1010).

FOR FURTHER INFORMATION CONTACT: James B. Lamb, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under sections 409(h) and 701(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(h) and 371(e)), FDA issues the following notice:

In accordance with paragraph (g) of § 10.30 of FDA's procedural regulations (21 CFR 10.30(g)), Lonza, Inc., Fair Lawn, NJ 07410, has withdrawn its petition (OCP 3488) that requests that FDA reverse its determination that quaternary alkyl dimethylammonium compounds derived from olefin-based amines will be regulated in the same manner as those derived from fatty acids. Notice of Lonza's petition was published in the Federal Register of February 22, 1980 (45 FR 11909). Lonza, Inc., withdrew its petition in a letter dated October 30, 1981.

Dated: January 20, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-2096 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

Vaccines and Related Biological Products Advisory Committee; Notice of Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Vaccines and Related Biological Products Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on December 31, 1983, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: January 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-2098 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0302; DESI 5914, 6303, 6340, 6514, 7937, and 8658]

Certain Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy ("Paragraph XIV/Category 15") Which Are No Longer Marketed; Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) revokes the temporary exemption for certain oral prescription drugs offered for relief of symptoms of cough, cold, or allergy, which permitted the products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. FDA reclassifies the products to lacking substantial evidence of effectiveness and offers an opportunity for a hearing on a proposal to withdraw approval of the new drug applications of these no longer marketed products.

DATES: Revocation of exemption effective January 29, 1982. Hearing requests due on or before March 6, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 81N-0302, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFI-35), Rm. 12A-12.

Requests for hearing, supporting data, and other comments: Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Rm. 4-62.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** (DESI 5914 on February 9, 1973 (38 FR 4008); DESI 6303 on May 22, 1971 (36 FR 9339), amended on March 19, 1973 (38 FR 7265); DESI 6340 on February 27, 1971 (36 FR 3832); DESI 6514 on February 9, 1973 (38 FR 4006); DESI 7937 on June 6, 1972 (37 FR 11277); DESI 8658 on February 9, 1973 (38 FR 4005)), FDA classified the drug products described below as less than effective for their labeled indications (probably effective, possibly effective, and lacking substantial evidence of effectiveness).

In a notice published in the **Federal Register** of December 14, 1973 (38 FR 34481), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study (DESI) program, for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptoms. That exemption covered the drug products that are the subject of this notice and superseded the notices of opportunity for hearing published earlier. The exemption was granted because of the close relationship between drugs sold over the counter (OTC)—and thus subject to the ongoing OTC drug review (21 CFR Part 330)—and prescription drugs offered for relief of cough, cold, allergies, and related symptoms. Postponement of final evaluations on the DESI prescription products enabled the agency to consider the recommendations of the OTC review panel in addition to any evidence submitted by NDA holders in response to various DESI notices covering relevant products. Those recommendations and a proposed monograph for over-the-counter cold, cough, allergy, bronchodilator, and antiasthmatic (CCABA) drugs were published in the **Federal Register** on September 9, 1976 (41 FR 38312).

No person has submitted additional data on the drug products listed below, and none of them is marketed any longer. Therefore the Director of the Bureau of Drugs has reclassified them to lacking substantial evidence of effectiveness. He concludes that these evaluations are not inconsistent with the recommendations of the OTC review panel. The Director notes that some of these products contain an ingredient already concluded to be effective when offered as a single active ingredient product or in conventional release dosage form. These products, however, lack evidence of effectiveness either as combination products (in which each ingredient has not been shown to contribute to the claimed effect) or as controlled release products (for which the claimed effects have not been substantiated).

This notice revokes the temporary exemption announced in the **Federal Register** of December 14, 1973, and offers an opportunity for hearing on the proposal to withdraw approval of the following combination products. The proposal regarding these products does not affect any single entity product, and affects other combination products only if they are identical or substantially similar or related to the following. Persons who wish to request a hearing may do so on or before March 1, 1982.

1. NDA 5-914: as it pertains to Pyribenzamine Expectorant with Codeine and Ephedrine, containing tripelennamine citrate, codeine phosphate, ephedrine sulfate, and ammonium chloride; Ciba Pharmaceutical Co., 556 Morris Ave., Summit, NJ 07901. (DESI 5914).

2. NDA 6-340: as it pertains to Histadyl and Ephedrine Hydrochloride Pulvules No. 1 and No. 2, containing methapyrilene hydrochloride and ephedrine hydrochloride; Eli Lilly and Co., 740 S. Alabama St., Box 618, Indianapolis, IN 46206. (DESI 6340).

3. NDA 8-658; Coricidin with Codeine Phosphate Tablets, containing chlorpheniramine maleate, codeine phosphate, aspirin, phenacetin, and caffeine; Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033. (DESI 8658).

4. NDA 8-670: Phenergan Expectorant Troches with Codeine, containing codeine phosphate, promethazine hydrochloride, ipecac powdered extract, and potassium guaiacolsulfonate; Wyeth Laboratories, Inc., Division of American Home Products Corp., P.O. Box 8299, Philadelphia, PA 19101. (DESI 6514).

5. NDA 8-893: Phenergan Expectorant Troches Plain, containing promethazine hydrochloride, ipecac powdered extract, and potassium guaiacolsulfonate; Wyeth Laboratories, Inc. (DESI 6514).

6. NDA 11-536: Kryl Tablets, containing isothipendyl hydrochloride, aspirin, phenacetin, phenylephrine hydrochloride, and ascorbic acid; Ayerst Laboratories, Division of American Home Products Corp., 685 Third Ave., New York, NY 10017. (DESI 6340).

7. NDA 12-909: Ulominic Syrup, containing chlophedianol hydrochloride, diphenylpyraline hydrochloride, phenylephrine hydrochloride, and guaifenesin (name previously used: glyceryl guaiacolate); Riker Laboratories, Inc., Subsidiary of 3M Company, 19901 Nordhoff St., Northridge, CA 91324. (DESI 6514).

8. NDA 12-910: Ulogesic Tablets, containing acetaminophen, chlophedianol hydrochloride, diphenylpyraline hydrochloride, phenylephrine hydrochloride, and guaifenesin (name previously used: glyceryl guaiacolate); Riker Laboratories, Inc. (DESI 6514).

This notice also revokes the temporary exemption announced in the Federal Register of December 14, 1973, and offers an opportunity for hearing on the proposal to withdraw approval of the following controlled release products. This notice does not affect the status of conventional release forms of these drugs. Persons who wish to request a hearing may do so on or before March 1, 1982.

1. NDA 10–395: Histionex 50 Capsules, containing phenyltoloxamine as a cation exchange resin complex of sulfonated polystyrene; Pennwalt Corp., Pharmaceutical Division, Jefferson Rd., Rochester, NY 14623. (DESI 7937).

2. NDA 11–905: Disomer Chronotabs, sustained release tablets containing dexbrompheniramine maleate; Schering Corp. (DESI 6303).

(Approval of two of these new drug applications was previously withdrawn: NDA 10–395 on June 7, 1977 (42 FR 29104) for failure to file reports required by section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)); NDA 8–658 on February 22, 1980 (45 FR 11910) based on the written request of the applicant who no longer markets the drug. At the time those two notices were published, the FDA had made no final conclusions concerning the effectiveness of the relevant products. This notice informs all interested persons, including any who market an identical, similar, or related drug product, of the conclusions which have now been reached.)

In addition to the holders of the new drug applications specifically named above, this notice applies to any person who manufactures or distributes a drug product, not the subject of an approved new drug application, that is identical, related, or similar (as limited above) to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts who are qualified by scientific training and experience, that meets the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and, for combination products, 21 CFR 300.50, and demonstrates the effectiveness of the drug products referred to in this notice.

Notice is given to the holders of the new drug applications, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications (except NDA 10–395 and NDA 8–658) and all amendments and supplements thereto providing for the drugs referred to in this notice on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drug products will have any of the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar (as limited above) to a drug product named above (21 CFR 310.6) and not the subject of a new drug application, are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products not the subject of a new drug application.

An applicant or other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before March 1, 1982, a written notice of appearance and request for hearing, and (2) on or before March 30, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which requires a hearing to determine the legal status of any of the drug products affected by this notice, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70 and 5.82).

Dated: January 6, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-2289 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81F-0409]

Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydroxypropyl methylcellulose as a nonnutritive additive to confectionery products.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A3252) has been filed by Dow Chemical Co., Midland, MI 48640, proposing that § 172.874 (21 CFR 172.874) be amended to provide for the safe use of hydroxypropyl methylcellulose as a nonnutritive additive to confectionery products.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 20, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-2290 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

Office of the Secretary

Office for Civil Rights; Delegation of Authority

Part A, Chapter AT (Office for Civil Rights), section AT.30, Delegations of Authority, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (45 FR 47474, July 15, 1980, as amended by 45 FR 82721, December 16, 1980) is amended to include at the end of section AT.30 the following delegation of authority from the Secretary to the Director for Civil Rights, effective December 29, 1981:

10. The civil rights enforcement authority contained in the Health and Human Services Block Grants prescribed by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

Dated: January 24, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-2370 Filed 1-28-82; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions, and Delegation of Authority

Part A (Office of the Secretary), Chapter AF (Office of the Inspector General most recently amended in 45 FR 29642-43, May 5, 1980) and Chapter AHP (Office of Personnel, Office of the Assistant Secretary for Personnel Administration most recently amended in 45 FR 72289-90, October 31, 1980) of the Statement of Organization, Functions, and Delegations of Authority are amended to reflect the transfer of personnel system standards of conduct investigations and the internal personnel security program. The personnel system standards of conduct investigation and personnel secruity functions are being transferred from the Office of the Assistant Secretary for Personnel Administration, Office of Personnel Systems Integrity to the Office of Inspector General, Office of the Assistant Inspector General for Investigations. The changes are as follows:

1. Amend Chapter AHP Office of Personnel, be deleting from Section AHP.20, subsection E.4. Division of Personnel Investigations the following phrase and sentence:

and non-criminal standards-of-conduct cases. Establishes and maintains an internal employee security program, and by inserting instead cases.

2. Amend Chapter AF, Office of Inspector General, Section AF.20 subsection D.1. The Office of Assistant Inspector General for Investigations by adding new paragraphs (g) and (h) to read as follows:

(g) Assess allegations, conducts investigations, and makes recommendations for disposition of personnel system standards-of-conduct cases.

(h) Maintains an intenal employee security program.

Dated: January 22, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-2369 Filed 1-28-82; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; CNG Producing Co.

AGENCY: Geological Survey, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4427, Block 318, Vermilion Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the Office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-44720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 22, 1982.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-2354 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Kerr-McGee Corp.

AGENCY: Geological Survey, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Kerr-McGee Corporation, Unit Operator of the Ship Shoal Block 28 Federal Unit Agreement No. 14–08–001–2942, submitted on January 7, 1982, a proposed supplement plan of development describing the activities it proposes to conduct on the Ship Shoal Block 28 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedure are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 22, 1982.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-2355 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Tenneco Oil Exploration and Production

AGENCY: Geological Survey, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Tenneco Oil Exploration and Production, Unit Operator of Vermilion Block 218 Federal Unit Agreement No. 14–08–0001–8816, submitted on January 6, 1982, a proposed annual plan of development/production describing the activities it proposes to conduct on the Vermilion Block 218 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 22, 1982.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-2356 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

New Mexico Generating Station Environmental Impact Statement; Preparation; Public Meetings

January 22, 1982.

AGENCY: New Mexico State Office, Bureau of Land Management, Interior.

ACTION: Schedule of public meetings to present the proposed action and alternatives of the subject environmental impact statement (EIS).

SUMMARY: The proposed action to be considered includes a proposed 2,000-megawatt coal-fired generating station and ancillary facilities in San Juan County, New Mexico. Included in the proposal are a water delivery system from the San Juan River to the plant site, and two 500 kilovolt transmission lines from the plant site to a proposed substation in Sandoval County, New Mexico. This proposal was the subject of public meetings held in January and February of 1981.

The public meetings are being held to: (1) Explain the final proposed action; (2) present the alternatives to the proposed action which will be analyzed; and (3) report progess on preparation of the EIS.

ADDRESS: Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Leslie Cone, Project Manager, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501, Telephone: (505) 988–6467, FTS 476–6467.

SUPPLEMENTARY INFORMATION: Dates, times, and locations of the scheduled meetings are as follows:

Taos, New Mexico; March 2, 1982; 7:00 to 9:00 p.m.; Kachina Lodge

Farmington, New Mexico; March 3, 1982; 7:00 to 9:00 p.m.; Civic Center, Rooms A and B

Albuquerque, New Mexico; March 4, 1982; 7:30 to 9:30 p.m.; Convention Center, Cochiti/Taos Room

Larry L. Woodard,

Acting State Director.

[FR Doc. 82-2353 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-84-M

National Petroleum Reserve—Alaska; Identification and Ranking of Tracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for the identification and ranking of tracts.

SUMMARY: The purpose of this notice is to invite interested parties to participate in the ranking of certain oil and gas lease tracts within the National Petroleum Reserve in Alaska (NPR–A) which were cleared for leasing in the Environmental Assessment (EA) published October 1, 1981. In addition, industry is invited to identify (delineate) other tracts within the cleared area which it wishes to have considered for offering at the second NPR–A lease sale scheduled for May 26, 1982.

DATE: Comments must be received by March 1, 1982.

FOR FURTHER INFORMATION CONTACT: Jerry Wickstrom, Anchorage, AK (907) 271–3632.

SUPPLEMENTARY INFORMATION: Interested parties are requested to (a) rank the tracts according to their perceived high, medium and low potential for oil and gas and (b) identify any tracts they believe to have so little potential that they should not be offered in the second lease sale. In addition

industry may delineate, on a whole township basis, any other tracts within the EA cleared area which it wishes to see considered for offering. The information supplied shall be treated as confidential and proprietary data if it is submitted to the address below in an envelope clearly marked—*Confidential: To Be Opened By The NPR–A Program Manager:*

Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, AK 99513.

The information collected as a result of this notice, as well as other available information, will aid in selecting the tracts which will be offered in the second lease sale.

A map showing the EA cleared lands and the tracts for which ranking is requested may be obtained from the Bureau of Land Management, Alaska State Office, address above. A suggested format for rating the tracts may also be obtained from that office.

"Rating" information and additional delineations must be received by close of business on March 1, 1982 to be considered.

Curtis V. McVee,

State Director.

January 15, 1982.

[FR Doc. 82–2203 Filed 1–28–82; 8:45 am]

BILLING CODE 4310–84–M

Casper District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

Notice is hereby given in accordance with Public Law 92–463, that a meeting of the Casper District Advisory Board will be held on March 23, 1982.

The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 951 Rancho Road, Casper, Wyoming.

The agenda for the meeting will include: (1) Review of the board charter and expanded role of the board; (2) review of new rangeland policies and procedures; (3) implementing the new rangeland management program policy; (4) review of fiscal year 1982 range betterment projects; and (5) outlook for range betterment projects in 1983.

The meeting is open to the public. Interested persons may make oral statements or file written statements for the board's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming by March 22, 1982. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the district manger.

Summary minutes of the board meeting will be maintained in the district office and be available for public inspection within 30 days following the meeting.

Leslie A. Olver,

Acting District Manager.

[FR Doc. 82–2270 Filed 1–28–82; 8:45 am]

BILLING CODE 4310–84–M

[Serial No. I–17973]

Idaho; Conveyance of Public Lands; Madison County

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), the following-described public lands have been sold by direct sale to Murland D. Boulter, Route 1, Box 285, Rexburg, Idaho 83440.

Boise Meridian, Idaho

T. 6 N., R. 38 E.,
Sec. 36, lot 8.

Comprising 24.85 acres.

The lands have historically been used by Mr. Boulter. They are surrounded by his deeded lands with no legal access and are uneconomical to manage as public lands. Sale of the lands to anyone other than Mr. Boulter would place undue physical and legal hardship on Mr. Boulter as well as any other buyer. The public interest was well served by completion of the sale. The fair market value of the land was appraised at $1,300 and payment in this amount was received by the United States.

Dated: January 18, 1982.

Louis B. Bellesi,

Chief, Division of Technical Service.

[FR Doc. 82–2274 Filed 1–28–82; 8:45 am]

BILLING CODE 4310–84–M

Intent To Prepare a Management Framework Plan Amendment

January 15, 1982.

AGENCY: BLM, Interior.

ACTION: Notice of intent to prepare a management framework plan amendment.

SUMMARY: The U.S. Department of the Interior, BLM, Las Cruces District, New Mexico, intends to prepare a Management Framework Plan Amendment including an Environmental Impact Statement as an integral part of the planning process. This Notice of Intent amends the Federal Register Notice of Intent To Prepare a Resource Management Plan which was published January 23, 1981.

DATES: Cited within this notice.

ADDRESS: Bureau of Land Management, Las Cruces District Office, P.O. Box 1420, Las Cruces, New Mexico 88004.

FOR FURTHER INFORMATION CONTACT:

William J. Harkenrider, Jr., Area Manager, Las Cruces/Lordsburg Resource Area, Telephone: (505) 523–5571, FTS 572–0257

or

Diana Edwards, Public Affairs Officer, Telephone: (505) 524–8551, FTS 572–0257.

SUPPLEMENTARY INFORMATION: The Department of the Interior, Bureau of Land Management (BLM), Las Cruces District, New Mexico, will prepare a Management Framework Plan (MFP) Amendment including an Environmental Impact Statement (EIS) as an integral part of the planning process. The purpose of this notice is to amend the Federal Register Notice published January 23, 1981, announcing preparation of a Resource Management Plan (RMP). Budgetary constraints require BLM to proceed with an MFP Amendment rather than a Resource Management Plan. The MFP Amendment will provide analysis and resource management decisions on approximately 2.9 million acres of public land administered by the Bureau in the Las Cruces/Lordsburg Resource Area.

Geographic Area of the Amendment

The Amendment will consider the public land and Federal subsurface mineral ownership in Dona Ana, Luna, Hidalgo, and Grant Counties as one planning area. This encompasses approximately 2.9 million acres of BLM administered surface and 3.8 million acres of Federal subsurface minerals under Federal, State, and private surface in the four county area.

Anticipated Issues

The issues that will be addressed during development of the MFP amendment include a proposed grazing program and oil and gas and geothermal energy leasing.

Relationship to Other Plans

A separate MFP Amendment for wilderness suitability or nonsuitability in the planning area will be conducted concurrently with this effort. The wilderness Amendment for the Las Cruces/Lordsburg Resource Area will be a component of BLM's statewide wilderness study process, explained in a separate Notice of Intent.

Interdisciplinary Team

The MFP Amendment will be developed by an interdisciplinary team

under the supervision of the Las Cruces/Lordsburg Area Manager. Individuals working on the Amendment full time will be a team leader, a writer-editor, an economist, a range conservationist, a wildlife specialist, a soils scientist, a minerals specialist, a wilderness specialist, a cartographer, and a typist. Additional technical support will be provided by Area and District staff specialists as needed.

Public Participation

A comprehensive public participation plan has been prepared covering the period from October 1, 1980, through March 31, 1984. It is intended to involve interested or affected parties early and continuously throughout the planning process.

The public participation plan is flexible and designed to accommodate the unique situations caused by the scattered nature of BLM's land ownership patterns and the variety of affected publics. The plan generally follows a "grass roots" approach to public involvement, emphasizing localized, one-to-one contacts and extensive direct mailings, as well as continual coordination with local, State, and other Federal agencies.

The public is invited to participate in the planning process. Identifying the depth of the issues involved will be the first step.

An individual may protest approval of the final MFP Amendment only with respect to those items submitted in writing to the District Manager during the planning process.

Public Meetings and Formal Notices

Workshops, briefings, and group discussions will be scheduled in conjunction with meetings of the District Advisory Council and the Grazing Advisory Board to ensure full representation and participation of interested and affected publics. Notice of the completion of the draft EIS in January 1983 will be published in the Federal Register and in news releases which will give exact dates of the public comment period. Publication of the final EIS (which will begin a 30-day opportunity for protest) is scheduled for September 1983.

This schedule is tentative and may be changed as the planning process unfolds. Complete records of all public participation events will be available for public review throughout development of the MFP Amendment. Records pertaining to the analysis and conclusions reached by the District Manager and staff throughout the planning and environmental analysis process will also be maintained and will be available for inspection upon request.

Persons desiring more information regarding this MFP Amendment should stop by the Las Cruces/Lordsburg Resource Area Office at 1705 North Valley Drive, Las Cruces, or contact one of the persons listed at the beginning of this notice.

Charles W. Luscher,

State Director.

[FR Doc. 82-2271 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-84-M

[N-15766]

Nevada; Airport Lease Application Amended

January 18, 1982.

Notice is hereby given that pursuant to the Act of May 24, 1928, (49 U.S.C. 211–214), Alfred F. Woodard has applied to amend his airport lease application N-15766, to include the following described lands:

Mount Diablo Meridian, Nevada

T. 45 N., R. 37 E.,
Sec. 35, S½SE¼.

The purpose of this notice is to inform the public that the filing of this amended application segregated the described public lands from all other forms of appropriation under the public land laws. Interested persons desiring their views should promptly send their comments together with their name and address to the Las Vegas District Manager, Bureau of Land Management, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Wm. J. Malencik,

Chief, Division of Technical Services.

[FR Doc. 82-2267 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-84-M

[Nev-047451]

Nevada; Proposed Continuation of Withdrawal; Correction

January 18, 1982.

In the FR Doc. 81-34190, published on page 58187-88, on Monday, November 30, 1981, add the following:

On page 58187, third column under Nev-047451, T. 4 N., R. 65 E., Sec. 26, should read: "NW¼NW¼, SW¼SE¼;"

Wm. J. Malencik,

Chief, Division of Technical Services.

[FR Doc. 82-2273 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-84-M

[NM 50270 OK]

New Mexico; Coal Lease Offering

January 21, 1982.

U.S. Department of the Interior, Bureau of Land Management (BLM), New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico, 87501. Notice is hereby given that certain coal resources in the land described below in LeFlore County, Oklahoma, will be offered for competitive lease by sealed bid of $25 or more per acre followed by oral auction to the qualified bidder of the highest cash amount per acre in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended.

The Bureau of Land Management cancelled the Oklahoma Subregion of the Western Interior Coal Production Region and designated Federal coal reserves in Oklahoma open to lease by application in accordance with 43 Code of Federal Regulations (CFR) 3425.1-5 (**Federal Register**, Vol. 46, No. 157, pp. 41218–41219, August 14, 1981). This proposed lease sale is a result of such an application (NM 50270 OK) filed by Dahlgren Contracting, Inc.

The sale will be held at 10:00 a.m., February 23, 1982, in Room 5417, Federeal Court House Building, 200 NW Fourth Street, Oklahoma City, Oklahoma 73102. Sealed bids must be received on or before 4:00 p.m., February 22, 1982 in the BLM Oklahoma Resource Area Office, Alpha P. Murrah Federal Building, Room 548, 200 NW Fifth Street, Oklahoma City, Oklahoma 73102. No bids received after 4:00 p.m., February 22, 1982, will be considered.

Coal Offered: The coal resource to be offered consists of all the recoverable coal in the Upper Hartshorne and Lower Hartshorne coal beds, minable by surface methods, in the following described land, located approximately 3 miles east of the town of McCurtain, LeFlore County, Oklahoma:

T. 8 N., R. 23 E., Indian Meridian,
Sec. 20, S½SW¼
Containing 80 acres.

The estimated total recoverable strippable reserves are 133,000 tons. The quality of the Upper Hartshorne coal bed is as follows (as received): 13,900 Btu per pound, 2.6 percent sulfur, and 8.0 percent ash. The quality of the Lower Hartshorne coal bed is as follows (as received): 14,800 Btu per pound, 1.4 percent sulfur, and 5.7 percent ash. The Upper Hartshorne coal bed averages 2.3 feet thick, the Lower Hartshorne coal bed averages 3.0 feet thick, and the parting separating the two coal beds averages 1.2 feet thick. The area underlain by surface minable coal is approximately 15.5 acres.

A lease issues as a result of this offering will provide for payment of an annual rental

of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of the coal. The value of the coal shall be determined in accordance with 30 CFR 211.63.

Notice of Availability: Bidding instructions are included in the Detailed Statement of the Lease Sale. A copy of the Statement and of the proposed coal lease are available at the BLM Oklahoma Resource Area Office at the address given above and at the BLM New Mexico State Office, Room 3031, on the third floor of the Joseph M. Montoya Federal Building and U.S. Post Office located on South Federal Place, Santa Fe, New Mexico. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentor and meeting exemptions stated in the Freedom of Information Act, are also available for public inspection at the aforementioned Room 3031, BLM New Mexico State Office in Santa Fe, New Mexico.

Leroy C. Montoya,

Acting State Director.

[FR Doc. 82-2269 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 4377]

Oregon; Modification of Classification for Multiple Use Management

1. By order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on July 16, 1969 (34 FR 11988), certain public lands were classified for multiple use management pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the regulations in 43 CFR Parts 2410 and 2411. The areas described in said order aggregate approximately 275,000 acres in Gilliam, Jefferson, Sherman, Wasco, and Wheeler Counties, Oregon.

2. The classification is hereby modified to provide that the following described lands be relieved of the segregative effect as to operation of the United States mining laws:

Willamette Meridian

T. 2 S., R. 15 E.,
Sec. 26, S½SW¼.
T. 3 S., R. 14 E.,
Sec. 13, S½NW¼ and N½SW¼;
Sec. 14, E½SE¼.
T. 3 S., R. 15 E.,
Sec. 3, W½SW¼;
Sec. 4, SW¼;
Sec. 5, E½SE¼;
Sec. 7, NE¼SW¼ and N½SE¼;
Sec. 8, SE¼SE¼;
Sec. 9, SW¼SW¼;
Sec. 17, NE¼NE¼ and N½SE¼.
T. 4 S., R. 14 E.,
Sec. 20, SE¼NE¼;
Sec. 21, NW¼NW¼;
Sec. 29, W½NE¼ and W½SE¼;
Sec. 32, N½NE¼;
Sec. 33, W½NW¼ and NW¼SW¼.
T. 5 S., R. 13 E.,
Sec. 24, Lots 5 and 6;
Sec. 25, Lots 5, 7, and 8.
T. 7 S., R. 14 E.,
Sec. 9, Lots 3 and 4, S½SW¼;
Sec. 17, Lots 2, 3, and 4.
T. 8 S., R. 14 E.,
Sec. 21, Lots 1, 2, 3, 4, and 5, S½SW¼, and SW¼SE¼.
T. 9 S., R. 13 E.,
Sec. 12, Lots 2, 3, 4, and 5;
Sec. 13, Lot 1, NW¼NE¼ and NE¼NW¼.
T. 13 S., R. 12 E.,
Sec. 8, NW¼NW¼ and S½NW¼;
Sec. 33, Lots 2 and 3, SW¼NE¼, and SE¼NW¼.

The areas described aggregate 2,370.76 acres in Wasco, Jefferson, and Sherman Counties, Oregon.

3. At 10 a.m., on March 8, 1982, the lands described in paragraph 2 will be open to location under the United States mining laws subject to the provisions of the Act of August 11, 1955 (69 Stat. 682; 43 U.S.C. 621).

Inquiries concerning the lands should be addressd to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 22, 1982.

Harold A. Berends,

Acting Associate State Director.

[FR Doc. 82-2268 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-84-M

Southcentral Land Use Plan; Proposed Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Amendment to the Southcentral Land Use Plan.

1. Summary: In order to comply with the directive of the Secretary of the Interior to make federal public lands available for mineral leasing, mineral entry and settlement, the Anchorage District Office of the BLM proposed to prepare an amendment to the Southcentral Land Use Plan of September 1980 addressing these uses of the land.

2. The geographic area to be considered consists of two blocks of federal land: the 4.5 million-acre Denali block, located south of the Alaska Range near the Denali Highway, but not adjacent to it; and the Tiekel block, a 507,000-acre parcel straddling the Richardson Highway. The lands described are subject to State selection. The lands are generally located in the following townships:

Copper River Meridian

T. 3 S., R. 1–3 E.
T. 4 S., R. 1–3 E.
T. 5 S., R. 1–3 E.; R. 1 W.
T. 6 S., R. 1–3 E; R. 1 W.
T. 7 S., R. 1–2 E; R. 1 W.
T. 7 N., R. 9–10 W.
T. 8 N., R. 4–7, 9–10 W.
T. 9 N., R. 1–10 W.
T. 10 N., R. 1–10 W.
T. 11 N., R. 1–10 W.
T. 12 N., R. 1–10 W.
T. 13 N., R. 1–10 W.
T. 14 N., R. 1–10 W.

Seward Meridian

T. 26 N., R. 12 E.
T. 27 N., R. 12 E.
T. 28 N., R. 12 E.
T. 29 N., R. 12 E.
T. 31 N., R. 11 E.
T. 32 N., R. 8–11 E.
T. 33 N., R. 8–12 E.

Fairbanks Meridian

T. 16 S., R. 4 W; R. 1–5 E.
T. 17 S., R. 3–4 W.; R. 1–5 E.
T. 18 S., R. 2–5 W.; R. 1–11 E.
T. 19 S., R. 1–4 W.; R. 1–11 E.
T. 20 S., R. 1–5 W.; R. 1–10 E., R. 13 E.
T. 21 S., R. 1–9 W.; R. 1–8, 10–13 E.
T. 22 S., R. 1–9 W.; R. 1–8, 10–13 E.

3. The issue to be considered is whether to open any lands within the blocks to mineral leasing, mineral location or settlement entry.

4. Disciplines to be represented in the assessment include lands, minerals, wildlife, recreation, cultural resources, fisheries, forest products, range, watershed, visual resources, soils, sociology and economics.

5. The public is being invited to participate in the assessment of these issues. Several points in the planning and assessment process have been identified for public involvement including the scoping and identification of issues, data gathering, development of criteria for decision-making, review of conflict resolution and final review of recommendations.

6. Residents of the affected area as well as other individuals and groups which participated in the original land use plan will be contacted by mail or in person during initial stages of the amendment process. Notices to the general public will be published in local papers. Small group presentations and personal interviews will be conducted throughout February and March. An open house will be scheduled for the Glennallen community in May as well as public meetings in Anchorage and Fairbanks. Exact dates and locations will be published in the local papers.

7. For further information contact: Steve Durkee, Phone (907) 267–1369, Glennallen Resource Area, Box 147, Glennallen, Alaska 99588.

8. Copies of maps of the blocks and of the Southcentral Land Use Plan will be available for public inspection at the Bureau of Land Management Glennallen Resources Area Office and the Anchorage Distict Office, 4700 E. 72nd Avenue, Anchorage, Alaska 99507.

Richard W. Tindall,

District Manager.

[FR Doc. 82-2272 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Intention To Negotiate Concession Contract; Watch Hill Marina, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Watch Hill Marina, Inc., authorizing it to continue to provide marina facilities and services for the public at Fire Island National Seashore for a period of fifteen (15) years from December 1, 1981, through November 30, 1996.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on November 30, 1979. The concessioner has continued to perform these obligations at the request of the National Park Service. Therefore, pursuant to the Act of October 9, 1965, as cited above, the concessioner is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Watch Hill Marina, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of Watch Hill Marina, Inc., is substantially equal to others received. In the event a responsive proposal superior to that of Watch Hill Marina, Inc., (as determined by the Secretary) is submitted, Watch Hill Marina, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Watch Hill Marina, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be post marked or hand delivered by March 1, 1982 to be considered and evaluated.

Interested parties should contact the Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, telephone (516) 289-4810, for information as to the requirements of the proposed contract.

Dated: January 14, 1982.

Herbert S. Cables, Jr.

Acting Regional Director, North Atlantic Region.

[FR Doc. 82-2368 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-70-M

Ice Age National Scenic Trail Advisory Council; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Ice Age National Scenic Trail Advisory Council will be held March 10, 1982, beginning at 9:00 a.m. in Room 117, GEF II Building, 101 South Webster Street, Madison, Wisconsin 53707.

The council was established on January 9, 1981, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1244, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Ice Age National Scenic Trail.

The members of the council are as follows:

Mr. Bill W. Dean (Chairperson)
Mr. David Weizenicker
Mr. John C. Wolter
Mrs. Grace Schmidley
Mr. John Zillmer
Mr. Robert W. Cromer
Hon. Warren P. Knowles

Matters to be discussed at the meeting will include issues related to the Comprehensive Management Plan for the Ice Age National Scenic Trail and the role of the council in administration of the trail.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Robert P. Martin, Chief, Division of Rivers and Trails, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone (402) 221-3371 (FTS 864-3371). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: January 20, 1982.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 82-2367 Filed 1-28-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating

authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: January 13, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

MC–F–14768, filed December 29, 1981. EDWARDS TRANSFER & STORAGE CO. (Edwards) (P.O. Box 23294, Columbus, OH 43223)—purchase (portion)—MILLER TRANSFER AND RIGGING CO. (Miller) (P.O. Box 322, Cuyahoga Falls, OH 44222). Representative: A. Charles Tell, Suite 1800, 100 E Broad St. Columbus, OH 43215.

Edwards seeks authority to purchase a portion of the interstate operating rights of Miller. United States Industries, Inc., a non-carrier and sole stockholder of Miller, and in turn, John J. Brutvan, who controls 62.7% of the stock of United States Industries, Inc., seek authority to continue in control of the unified rights.

The operating authority to purchase is contained in certificate No. 87103 and (Sub-Nos. 9, 11G, 12G, 13, 14, 15, 17, 18, 19G, 20, 21G, 22, 23, 24, 25, 26, 27, 30, 31, 32, 35, 36, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, E–1 and E–2). The authority to be purchased by Edwards generally authorizes the transportation of *household goods, commodities the transportation of which because of size or weight require the use of special equipment, machinery, and contractors equipment and supplies, tires, machinery, hydraulic pressure and shearing machinery, glass, iron and steel articles, brass and copper, industrial fans,* between various specified points in the United States.

Miller is a common carrier pursuant to authority issued in MC–38799 and sub-numbers thereunder. Edwards and Miller are commonly controlled by United Transport Industries, Inc. pursuant to MC–F–13970.

United also controls Miller Transfer and Rigging Co. (MC–87103), East-South Express, Inc. (MC–138773) and Midwest Specialized Haulers, Inc. (MC–108962).

MC–F–14769, filed December 29, 1981, TRANSCON INCORPORATED (TC) (101 Continental Blvd., El Segundo, CA, P.O. Box 92220, Los Angeles, CA 90009)—Continuance in Control—TC CARRIERS (TCC), P.O. Box 158, Placentia, CA 92671. Representative: Wentworth Giffin, Suite 600, 1221 Baltimore, Kansas City, MO, 64105. TC a non-carrier with its stock publicly held and widely distributed, seeks authority to continue in control of TCC upon the institution by TCC of operations in interstate or foreign commerce. TC holds no authority from this Commission. However, it controls through stock ownership, Transcon Lines (TCL), a motor common carrier operating pursuant to authority issued in MC–110325 and subs thereunder, authorizing operations in all of the contiguous 48 States. TCC has been granted authority to operate as a common carrier in MC–151558F in the transportation of *general commodities,* except household goods as defined by the Commission and Classes A & B explosives, over irregular routes, between points in California, New Jersey, New York, Union and Butler Counties, PA, Noble and LaPorte Counties, IN, Pima County, AZ, Kanawha County, WV, Bedford County, TN, St. Louis, MO, Cincinnati, OH and Atlanta, GA, on the one hand, and, on the other, points in the United States.

TCC also has pending an application in MC–151558 (Sub 1) seeking authority to transport general commodities (except Classes A and B explosives) between all points in the United States except CA, NY, and NJ. The latter application was published in the Federal Register of September 25, 1981.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–2236 Filed 1–28–82; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Continental Fiberglass Corporation, 339 S.W. 6th Street, Des Moines, Iowa 50309.

2. Wholly-owned subsidiary which will participate in the operations: (i) Consource of Iowa, Inc., 319 S.W. 5th Street, Des Moines, Iowa 50309; Incorporated in the State of Iowa.

1. Parent corporation and address of principal office: Great Lakes Cheese Co., Inc., 9989 Kinsman Road, Newbury, Ohio 44065.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: GLC Transportation, Inc., incorporated under the laws of the State of Ohio.

1. My name is William R. Nath, and I own all of the outstanding common capital stock of The Home Oil Company, Inc.

Further, I own 60% of the outstanding common capital stock of HOC Express, Inc., and my wife Jennifer W. Nath owns 40% of the outstanding common capital stock of HOC Express, Inc.

2. The wholly-owned subsidiaries that will participate in the operations and their states of incorporation are as follows:

(a) The Home Oil Company, Inc., 125 N. Elizabeth, Wichita, Kansas 67203, a Kansas Corporation.

(b) HOC Express, Inc., 125 N. Elizabeth, Wichita, Kansas 67203, a Kansas Corporation.

1. Name and address of parent corporation: Nucorp Energy, Inc., an Ohio Corporation, Fifth Avenue Financial Center, 2550 Fifth Avenue, Suite 1100, San Diego, California 92103.

2. Wholly-owned subsidiaries which will participate in the operations and State of incorporation:

(a) Nucorp Energy, Inc., a Texas Corporation.
(b) Nucorp Supply, Inc., a Texas Corporation.
(c) Nucorp Compressor, Inc., a Texas Corporation. (A wholly owned subsidiary of Nucorp Supply, Inc.)
(d) Nucorp Energy Company, an Ohio Corporation.
(e) Maverick Tube Corp., a Missouri Corporation.
(f) Crowder Tank, Inc., an Oklahoma Corporation.
(g) Nucorp Energy of Oklahoma, Inc., an Oklahoma Corporation.
(h) Cogburn Pump & Supply Co., a Delaware Corporation.
(i) Bill Dorland Machine & Equipment, Inc., a Texas Corporation.
(j) Taylor Industries, Inc., an Oklahoma Corporation.
(k) Allied Pipe & Supply, Inc., a Texas Corporation.
(l) Condor Pipe Incorporated, a Texas Corporation.
(m) Eagle Upsetters, Inc., a Colorado Corporation.
(n) Jim Williams & Associates, Inc., a Louisiana Corporation.
(o) Martin Pipe Company, Inc., a Louisiana Corporation.
(p) Scarborough Manufacturing Company, Inc., a Mississippi Corporation.
(q) Superior Applied Products, Inc., a Texas Corporation.
(r) Sweetwater Pump & Supply, Inc., a Texas Corporation.
(s) Wildcat Supply, Inc., a Oklahoma Corporation.

1. The parent corporation and address of principal office: Space Center, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(a) Space Center Minnesota, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(b) Space Center Kansas City, Inc., a Missouri corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(c) Kansas City Terminal Warehouse Company, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(d) Space Center Ohio, Inc., an Ohio corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(e) Space Center Dallas, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(f) Space Center Edina, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(g) Kolstad Company, a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(h) Space Center, Inc. (California), a California corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(i) Space Resources, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(j) Transport Technicians, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(k) All Area Express, Inc., a South Dakota corporation, P.O. Box 5027, Sioux Falls, South Dakota 57117.
(l) Space Center Chicago, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(m) GeoSpace, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.
(n) Space Center Texas, Inc., a Minnesota corporation, 444 Lafayette Road, St. Paul, Minnesota 55101.

1. Parent corporation: Timex Corporation, Waterbury, CT 06720.

2. Wholly-owned subsidiary which will participate in the Operation: (a) Timex Clock Company.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-2297 Filed 1-28-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP1-11]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of petitions for leave to intervene must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleadings shall comply with 49 CFR 1100.252 addressing specifically the issue(s) indicated as the purpose for republication.

MC 144821 (Sub-13) (republication), filed August 10, 1981, previously noticed in the **Federal Register** issue of September 2, 1981. Applicant: FREEEDOM FREIGHTWAYS, INC., 9060 Latty Ave., St. Louis, MO 63134. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. A Decision by the Commission Review Board Number 2, decided December 1, 1981 and served December 9, 1981, finds that the present and future public convenience and necessity require operation by applicant as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *chemical and petroleum products,* between Chicago, IL, and Vicksburg, MS, on the one hand, and, on the other, points in the United States (except AK and HI), and (2) *metal and metal products,* between Chicago, IL, Baltimore, MD, Herculaneum, MO, Toledo, OH, and points in Beaver County, PA, on the one hand, and, on the other, points in the United States (except AK and HI). Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to clarify the scope of authority granted.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-2296 Filed 1-28-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-2 (Sub-No. 37)]

Louisville & Nashville Railroad Co.—Abandonment in Henry and Benton Counties, TN; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authorizing the Louisville and Nashville Railroad Company to abandon a portion of a line of railroad known as the Big Sandy Branch of its Nashville Division extending from railroad milepost F-229.8 near Big Sandy to milepost F-240.7 near Paris, a distance of 10.9 miles, in Henry and Benton Counties, TN, subject to certain conditions. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Richard A. Kelly, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this notice. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the

Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-2295 Filed 1-28-82; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment not a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satified before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP1-09

Decided: January 20, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 38921 (Sub-22), filed January 12, 1982. Applicant: KMA LEASING, INC., dba, WM. H.P., INC., 1342 North Howard St., Philadelphia, PA 19122. Representative: Edward J. Kiley, 1730 M St., NW., Washington, DC 20036, (202) 296-2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 52330 (Sub-2), filed January 12, 1982. Applicant: WASHINGTON COAST LINES, INC., 2616 Summer Ave., Aberdeen, WA 98520. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K Street NW., Washington, DC 20005, (202) 783-3525. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in King and Pierce Counties, WA, and extending to points in the U.S. (including AK, but excluding HI).

MC 109821 (Sub-72), filed January 8, 1982. Applicant: TAYNTON FREIGHT SYSTEMS, INC., 40 Main St., Wellsboro, PA 16901. Representative: Larry Sherman (same address as applicant), (717) 724-1611. Transporting *glass products,* between points in Tioga County, PA, on the one hand, and, on the other, points in Rockingham County, NH.

MC 118420 (Sub-11), filed January 11, 1982. Applicant: BULLDOG TRUCKING OF GEORGIA, INC., P.O. Box 555, Carnesville, GA 30521. Representative: K. Edward Wolcott, 1200 Atlanta Gas Light Tower, 235 Peachtree Street NE., Atlanta, GA 30303, (404) 522-2322. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between the facilities of E. I. Dupont de Nemours & Co. at points in the U.S. in and east of MN, IA, MO, AR and LA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 121281 (Sub-16), filed January 11, 1982. Applicant: BIG MAC TRUCKING COMPANY, 2400 Augusta Dr., Suite 150, Houston, TX 77057. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024, (713) 827-1407. Transporting *concrete products,* between points in Tarrant County, TX, on the one hand, and, on the other, points in LA, OK, and AR.

MC 126320 (Sub-19), filed January 12, 1982. Applicant: DETTINBURN TRUCKING, INC., Route 3, Box 24, Petersburg, WV 26847. Representative: Daniel B. Johnson, 4304 East-West Hwy, Bethesda, MD 20814, (301) 654-2240. Transporting *paper and paper products,* betwen those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 128761 (Sub-8), filed January 11, 1982. Applicant: RICHARD M. GODFREY, 8530 Kingscove Drive, Salt Lake City, UT 84121. Representative: Irene Warr, 311 S. State St., Ste. 280, Salt Lake City, UT 84111, (801) 531-1300. Transporting *such commodities* as are dealt in by grocery stores and food business houses, between points in the U.S., under continuing contract(s) with Albertson's, Inc., of North Salt Lake, UT.

MC 130331 (Sub-1), filed January 11, 1982. Applicant: MONARCH TOURS, INC., d.b.a. HORIZON TOURS, 993 Claygate Court, Manchester, MO 63011. Representative: Robert E. Hoelscher (same address as applicant), (314) 821-2200. As a *broker,* at Manchester and St. Louis, MO, in arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in the U.S.

MC 145130 (Sub-7), filed January 11, 1982. Applicant: ATICO TRANSPORT, INC., 6700 S. Le Claire Avenue, Chicago, IL 60638. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016, (312) 298-1084. Transporting *chemicals and related products,* between points in Muskegon

County, MI, on the one hand, and, on the other, points in IL.

MC 147911 (Sub-10), filed January 7, 1982. Applicant: TILFORD TRUCKING, INC., P.O. Box 34, Readyville, TN 37149. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004, (202) 347–8862. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S., under continuing contract(s) with Berwind Corporation, of Philadelphia, PA, and Perfect Equipment Company, of Murfreesboro, TN.

MC 148020 (Sub-5), filed January 11, 1982. Applicant: BIG "M" TRANSPORT, INC., 3100 Hilton St., Jacksonville, FL 32209. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632–2300. Transporting *chemicals and related products and toilet preparations,* between points in Duval County, FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152250 (Sub-4), filed January 11, 1982. Applicant: WHITE TRANSPORT, INC., P.O.B. 2063, Sheridan, WY 82801. Representative: Charles A. Murray, Jr., 2822 third Ave. N., Billings, MT 59101, (406) 252–4165. Transporting *fertilizer,* between points in Franklin County, WA, and Bannock and Caribou Counties, ID, on the one hand, and, on the other, points in Judith Basin County, MT.

MC 152650 (Sub-3), filed January 6, 1982. Applicant: SHAVER TRUCKING, INC., 3600 Highway #68, P.O. Box 104, Springdale, AR 72764. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753, (501) 846–2185. Transporting *furniture parts, metal products, and paper products,* between Phoenix, AZ, Mason, OH, Birmingham, AL, Little Rock, AR, and Jacksonville, FL, St. Louis, MO, and points in Jasper, Greene and Lawrence Counties, MO, Clark, Shelby and Jessamine Counties, KY, Atlanta, GA, and points in Walton County, GA, Beaufort, Robeson and Davidson Counties, NC, and Los Angeles County, CA, Dallas, TX, and points in Ellis County, TX, Oakland County, MI, and Ozaukee County, WI, on the one hand, and, on the other, points in the U.S.

MC 153800 (Sub-2), filed January 11, 1982. Applicant: S & B TRUCKING, INC., Route 1, Box 151, Colfax, WI 54730. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101, (612) 291–1215. Transporting *hides,* between points in Muscatine County, IA, on the one hand, and, on the other, points in TX, KS, and Sheboygan County, WI.

MC 156461, filed January 11, 1982. Applicant: BURWICK'S, INC., Route No. 3, Box 159X, Dickinson, ND 58601. Representative: Richard P. Anderson, 2525 South University Drive, P.O. Box 2581, Fargo, ND 58108, (701) 235–2581. Transporting *chemicals, salt and salt products,* between points in Weber, Salt Lake, Davis and Tooele Counties, UT, on the one hand, and, on the other, points in ND and MT.

MC 159221 (Sub-1), filed January 11, 1982. Applicant: S.K.T., 623 N.E. 10th St., Minot, ND 58701. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Becwar-Cedarstrom, Porter Brothers, American Lifestyle, Inc., and North Star Steel, Inc., all of Minot, ND.

MC 160041, filed January 11, 1982. Applicant: AMERICAN TRANSFER COMPANY, 623 2nd St., Farmington, MN 55024. Representative: A. G. Nordvik (same address as applicant) (612) 463–3514. Transporting *roofing granules,* between points in the U.S., under continuing contract(s) with Owens-Corning Fiberglas Corporation, of Toledo, OH.

MC 160050, filed January 11, 1982. Applicant: VERDONI TRANSPORTATION, INC., 1247 Ridge Road, Ambridge, PA 15003. Representative: Salley A. Davoren, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222, (412) 471–3300. Transporting (1) *metal products,* between points in NY, PA, CT, ME, VT, NH, MA, RI, NJ, MD, WV, OH, IN, MI, WI, IL, VA and KY, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, KS, OK and TX, and (2) *machinery,* between points in PA, NY, MD, WV, OH, WI, KY and VA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, KS, OK and TX.

Volume No. OP1–12

Decided: January 21, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating in part.)

MC 48221 (Sub-35), filed January 15, 1982. Applicant: W. N. MOREHOUSE TRUCK LINE, INC., 4010 Dahlman Avenue, Omaha, NE 68107. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106, (402) 392–1220. Transporting (1) *food and related products,* between Denver, CO, on the one hand, and, on the other, points in TX, (2) *hardware,* between points in Cook County, IL, on the one hand, and, on the other, points in MN, NE, IA, MO and KS, and (3) *malt beverages,* between points in Jefferson County, CO, on the one hand, and, on the other, points in AR, MS, MO, TN, LA, and TX.

MC 58440 (Sub-7), filed January 15, 1982. Applicant: SCENIC HAWKEYE STAGES, INC., 703 Dudley St., Decorah, IA 52101. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in IA, MN, and those in WI on and south of U.S. Hwy 12, and extending to points in the U.S.

MC 98391 (Sub-4), filed February 2, 1981, previously noticed in **Federal Register** issue of March 3, 1981. Applicant: JAKEL MOVING & STORAGE CO., 405 36th St., S.E., Grand Rapids, MI 49508. Representative: Tom Mieras (same address as applicant), (616) 245–2133. Transporting (1) *environmental test chambers, equipment and instruments,* and (2) *parts* for the commodities in (1), between points in the U.S., under continuing contract(s) with Thermotron Corporation, of Holland, MI. Condition: Issuance of a permit in this proceeding is subject to the coincidental cancellation, at applicnt's written request, of Permit No. MC–98391 Sub 4, issued May 15, 1981.

Note.—This republication clarifies the authority sought.

MC 108631 (Sub-24), filed January 12, 1982. Applicant: BOB YOUNG TRUCKING, INC., Schoenersville Rd. at Industrial Dr., Bethlehem, PA 18017. Representative: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110 (215) 561–1030. Transporting *food and related products,* between points in Lehigh and Northampton Counties, PA, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, and AL.

MC 118130 (Sub-125), filed January 11, 1982. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6459, Fort Worth, TX 76115. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103 (817) 332–4718. Transporting *food and related products,* between the facilities of Monfort of Colorado, Inc., at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 134370 (Sub-10), filed January 15, 1982. Applicant: OSBORNE TRUCKING COMPANY, INC., Paradise Valley Route, Box 2409, Riverton, WY 82501.

Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202 (303) 892–6700. Transporting *lumber and wood products,* between points in the U.S., under continuing contract(s) with Teton West Lumber, Inc., of Cheyenne, WY, and Potlatch Corporation, of Lakewood, CO.

MC 136010 (Sub-3), filed January 11, 1982. Applicant: SCHNEIDER IRON & METAL, INC., Rte. 1, Box 113, Iron Mountain, MI 49801. Representative: William J. Bolognesi, P.O. Box 705, Iron Mountain, MI 49801 (906) 774–2209. Transporting *castings,* between Menominee, MI, and Kaukauna, Fond du Lac, and Madison, WI.

MC 143531 (Sub-10), filed January 15, 1982. Applicant: POWDER RIVER MOTOR TRANSPORT CORPORATION, P.O. Box 300, Provo, UT 84603. Representative: Irene Warr, 311 S. State St., Suite 280, Salt Lake City, UT 84111 (801) 531–1300. Transporting *rubber and plastic products,* between points in Pierce County, WA, on the one hand, and, on the other, points in UT and ID.

MC 145110 (Sub-1), filed January 15, 1982. Applicant: WILLAMETTE INDUSTRIES, INC., TRUCKING DIVISION, P.O. Box G, Beaverton, OR 97005. Representative: Edwin M. Snyder, P.O. Box 45538, Dallas, TX 45538 (214) 358–3341. Transporting *paper and paper products,* between points in Dallas and Tarrant Counties, TX, on the one hand, and, on the other, points in AR.

MC 146791, filed January 15, 1982. Applicant: G–C–F TRANSPORT COOPERATIVE ASSOCIATION, Fennimore, WI 53809. Representative: Patricia Thimmig, 25 W. Main St., Suite 801, Madison, WI 53703 (608) 255–7277. Transporting *chemicals and related products,* between points in the U.S., under continuing contract(s) with Fennimore Cooperative Oil Co., of Fennimore, WI, and Mt. Horeb Farmers Cooperative, of Mt. Horeb, WI.

MC 147491 (Sub-5), filed January 8, 1982. Applicant: TAB TRUCKING, INC., 4342 Janitrol Rd., Columbus, OH 43228. Representative: Brian S. Stern, North Springfield Professional Centre II, 5411–D Backlick Rd., Springfield, VA 22151 (703) 941–8200. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of steel and aluminum cylinders, between points in Franklin County, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 148141 (Sub-4), filed January 12, 1982. Applicant: GOODY PRODUCTS, INC., 969 Newark Turnpike, Kearny, NJ 07032. Representative: William Jacobs (Same address as applicant) (201) 997–3000. Transporting *rubber,* between points in the U.S., under continuing contract(s) with William T. Burnett & Co., Inc., of Baltimore, MD.

MC 149100 (Sub-16), filed January 11, 1982. Applicant: JIM PALMER TRUCKING, 9730 Derby Drive, Missoula, MT 59801. Representative: John T. Wirth 717–17th Street, Suite 2600, Denver, CO 80202. Transporting *lumber and wood products, and building materials,* between points in the U.S., under continuing contract(s) with Louisiana-Pacific Corporation, of Portland, OR.

MC 150301 (Sub-16), filed January 4, 1982. Applicant: EQUITY TRANSPORTATION COMPANY, INC., 9744 E. Fulton Rd., Ada, MI 49301. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under continuing contract(s) with Herman Miller, Inc., of Zeeland, MI.

MC 150401 (Sub-2), filed January 18, 1982. Applicant: THERMAL SYSTEMS INDUSTRIES, 3055 W. 2100 S. Salt Lake City, UT 84119. Representative: Irene Warr, Ste. 280, 311 S. State St., Salt Lake City, UT 84111. Transporting *building materials,* between points in the U.S., under continuing contract(s) with General Building Materials, of Englewood, CO.

MC 153810, filed January 5, 1982. Applicant: FOUST TRUCKING, INC., 8466 Crestway, Clayton, OH 45315. Representative: Charles K. Boxell, First Federal Plaza, 711 Adams St., Toledo, OH 43624, (419) 243–6281. Transporting (1) *food and related products,* between points in OH, on the one hand, and, on the other, points in MI, PA, IN, IL, and KY; (2) *metal products,* between points in IL, MI, and PA, on the one hand, and, on the other, points in IN, IL, OH, PA, KY and MI; and (3) *building materials,* between points in MI, IL, and PA, on the one hand, and, on the other, points in MI, IL, OH, and PA.

MC 154121 (Sub-18), filed January 8, 1982. Applicant: TRAILINER CORP., 5367 West 86th St., Indianapolis, IN 46268. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 435–7140. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between the facilities used by International Nu-Way Shippers Association at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 154240 (Sub-1), filed January 13, 1982. Applicant: HEIL WINDERMERE STORAGE & MOVING CO., 8649 Freeway Dr., Macedonia, OH 44056. Representative: Richard J. Heil (same address as applicant), (216) 467–1111. Transporting *general commodities* (except classes A and B explosives), between points in Cuyahoga, Lake, and Summit Counties, OH, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MD, MI, MN, MO, NJ, NM, NY, NC, OK, PA, SC, TN, TX, VA, WV, and WI.

MC 158120 (Sub-1), filed January 15, 1982. Applicant: GLENN R. DUSENBERRY, 2311 Sampson St., Muscatine, IA 52761. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501 (515) 682–8154. Transporting *food and related products,* between points in Blackhawk and Louisa Counties, IA, on the one hand, and, on the other, points in AR, IL, IN, KS, MN, MO, MI, NE, and WI.

MC 158761, filed January 11, 1982. Applicant: GLENN D. ROGNESS, d.b.a. GLENN D. ROGNESS TRUCKING, Route 3, Fergus Falls, MN 56537. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402 (612) 340–0808. Transporting *food and related products,* between Chester and Chicago, IL, on the one hand, and, on the other, points in ND and MN.

MC 160020, filed January 8, 1982. Applicant: EAST-PORT MOTORS, INC., Cherry Tree Lane—RR2 Box 286, Highland Lakes, NJ 07422. Representative: Edward L. Nehez, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068 (201) 992–2200. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Leisure Line Toys, Inc., Gabriel Industries, both of Secaucrus, NJ; Sanyo Electric, Inc., of Little Ferry, NJ; Universal Foods Corporation, of Carlstadt, NJ; and Val D'Or, Inc., of New York, NY.

MC 160021, filed January 11, 1982. Applicant: EMPIRE PACIFIC TRAVEL SERVICES CORPORATION, 222 Mamaroneck Avenue, White Plains, NY 10605. Representative: Stephen L. Fine, 1370 Avenue of the Americas, 25th Floor, New York, NY 10019 (212) 757–4000. As a *broker* at White Plains, NY, in arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, between points in NY and those in Fairfield County, CT, on the one hand, and, on

the other, points in NY, PA, NJ, CT, RI, MA, VT, NH, and ME.

MC 160040, filed January 11, 1982. Applicant: SPORTS AMERICA TOURS INC., 359 Bel Marin Keyes, Suite 28, Novato, CA 94947. Representative: Eldon M. Johnson, 650 Califorina St., Suite 2808, San Francisco, CA 94108 (415) 986–8696. As a *broker* at Novato and Santa Monica, CA, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, beginning and ending at points in CA, and extending to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

MC 160051, filed January 11, 1982. Applicant: TALENT TRUCKING CO., P.O. Box 320, Talent, OR 97450. Representative: John A. Anderson, Suite 801—The 1515 Bldg., 1515 SW 5th Ave., Portland, OR 97201, (503) 227–4586. Transporting (1) *food and related products*, (2) *chemicals and related products*, (3) *metal products*, (4) *furniture and fixtures*, (5) *farm products*, and (6) *machinery*, between points in Jackson County, OR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160070, filed January 11, 1982. Applicant: MSA–LAMDA CARTAGE, INC., 4430 E. Sheila St., Los Angeles, CA 90023. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills CA 90211, (213) 655–3573. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with MSA–LAMDA, Inc., of Los Angeles, CA.

MC 160080, filed January 13, 1982. Applicant: BENDIX TRANSPORTATION MANAGEMENT CORPORATION, 20650 Civic Center Drive, P.O. Box 5084, Southfield, MI 48037–5084. Representative: Robert W. Daley, P.O. Box 5060, Southfield, MI 48037, (313) 827–6476. Transporting *general commodities* (except classes A and B explosives, commodities in bulk and household goods), between points in the U.S. (except AK, HI, ID, MT, ND, SD, and WY).

MC 160081, filed January 11, 1982. Applicant: WHIRLWIND COACH TOURS, P.O. Box 1127, Winston-Salem, NC 27102. Representative: Gary L. Smith (same address as applicant), (919) 723–8861. As a *broker* at Winston-Salem, NC, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, between points in NC, on the one hand, and, on the other, points in the U.S.

MC 160101, filed January 5, 1982. Applicant: J & L COMPANY, INC., P.O. Box 1187, Evanston, WY 82930. Representative: Irene Warr, 311 S. State St., Suite 280, Salt Lake City, UT 84111. Transporting *Mercer commodities*, between points in UT, WY, CO, ID, ND, SD, and MT.

MC 160121, filed January 18, 1982. Applicant: BULLOCK TRUCKING, 7439 Hunt St., Boise, ID 83709. Representative: Walter R. Bullock (same address as applicant), (208) 362–5298. Transporting (1) *lumber and wood products, and building materials*, between points in ID, WA, OR, CA, NV, UT, WY, CO. MT, AZ, and NM, and (2) *clay, concrete, glass or stone products*, between points in ID and OR.

Volume No. OP3–15

Decided: January 25, 1982.

By the Commission Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 56914 (Sub-7), filed January 15, 1982. Applicant: ARIZONA BUS LINES, INC., 814 W. Jefferson, Phoenix, AZ 85007. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012, (602) 274–5146. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Maricopa, Pinal, and Pima Counties (except Tucson), AZ, and extending to points in the U.S. (except AK and HI).

MC 70015 (Sub-8), filed January 15, 1982. Applicant: ALEXANDER B. POLLOCK, d.b.a. JIFFY VANS, 6575 E. Pleasant Run Parkway, Indianapolis, IN 46219. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *household goods*, between points in IN, on the one hand, and, on the other, points in IA, KS, OK, TX, AR, LA, MS, AL, FL, GA, SC, and NC.

MC 103734 (Sub-4), filed January 15, 1982. Applicant: NOONEY BUS LINES, INC., 1017 Jefferson St., Roanoke Rapids, NC 27870. Representative: Steven L. Weiman, Suite 145, 4 Professional Dr., Gaithersburg, MD 20879, (301) 840–8565. Transporting *passengers and their baggage*, in charter and special operations, beginning and ending at points in (a) Mecklenburg, Brunswick, and Greensville Counties, VA, and (b) Vance, Warren, Halifax, Northampton, Nash, Edgecombe, Gates, Hertford, Chowan, Bertie, Martin, and Washington Counties, NC, and extending to points in the U.S.

MC 107515 (Sub-1422), filed January 12, 1982. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., N.E., Suite 520, Lennox Towers South, Atlanta, GA 30326, (404) 262–7855. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S.

MC 125535 (Sub-36), filed January 18, 1982. Applicant: NATIONAL SERVICE LINES, INC. OF NEW JERSEY, 2275 Schuetz Rd., St. Louis, MO 63141. Representative: Donald S. Helm (same address as applicant), (314) 569–1161. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk in tank vehicles), between points in the U.S.

MC 126904 (Sub-45), filed January 15, 1982. Applicant: H. C. PARRISH TRUCK SERVICE, INC., Rural Route 2, P.O. Box 264, Freeburg, IL 62243. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107, (215) 735–3090. Transporting *petroleum, natural gas and their products, chemicals and related products, rubber and plastic products, pulp, paper and related products, machinery and metal products*, between St. Louis, MO, Chicago, IL, and points in St. Clair County, IL, on the one hand, and, on the other, points in the U.S.

MC 143214 (Sub-9), filed January 11, 1982. Applicant: MATUSZKO TRUCKING, INC., 19 Ball Lane, North Amherst, MA 01059. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, (413) 732–1136. Transporting *such commodities* as are dealt in or used by chain grocery stores, food processing houses or variety houses, between points in the U.S. under continuing contract(s) with Oxford Pickle Company, a division of John E. Cain Company of South Deerfield, MA.

MC 145655 (Sub-8), filed January 12, 1982. Applicant: TYSON FOODS, INC., P.O. Drawer E, Springdale, AR 72764. Representative: Michael H. Mashburn, P.O. Box 869, Springdale, AR 72764, (501) 751–5222. Transporting *such merchandise* as is dealt in by grocery and food business houses, between points in the U.S. (except AK and HI) under continuing contract(s) with Kroger Corporation of Cincinnati, OH.

MC 152744 (Sub-1), filed January 15, 1982. Applicant: CITADEL TRANSPORT, INC., 180 N. Michigan Ave., Chicago, IL 60603. Representative: Daniel C. Sullivan, 10 S. LaSalle, St.,

Suite 1600, Chicago, IL 60603, (312) 263–1600. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. under continuing contract(s) with The Quaker Oats Company, Merchandise Mart Plaza, of Chicago, IL.

MC 157155, filed January 11, 1982. Applicant: CARLTON V. MAYS, Route 4, Amherst, VA 24521. Representative: Carlton V. Mays (same address as applicant), (804) 277–5168. Transporting *lumber and wood products*, between points in VA, on the one hand, and, on the other, points in NC, TN and WV.

MC 158655 (Sub-6), filed January 11, 1982. Applicant: GRAND EXPRESS, INC., 4750 Clyde Park, SW., Grand Rapids, MI 49509. Representative: H. Barney Firestone, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603, (312) 263–1600. Transporting *such commodities* as are dealt in or used by department stores and food and drug stores, between points in Licking, Hamilton, Lucas, Clark, Marion, Butler, and Hancock Counties, OH, Kenton County, KY, and points in MI, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK and TX.

MC 160075, filed January 11, 1982. Applicant: BAMBARGER WRECKER SERVICE, INC., P.O. Box 2275, Tuscaloosa, AL 35403. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201, (205) 254–2880. Transporting *transportation equipment*, between points in AL, on the one hand, and, on the other, points in the U.S.

MC 160094, filed January 12, 1982. Applicant: A–B BUS SERVICE, INC., 4918½ 24th St., N., St. Petersburg, FL 33714. Representative: Morris J. Levin, 1050 17th St., NW., Washington, DC 20036, (202) 872–0005. Transporting *passengers and their baggage* in special and charter operations, beginning and ending at points in FL, and extending to points in the U.S.

Volume No. OP4–24

Decided: January 21, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 128837 (Sub-45), filed January 15, 1982. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *iron and steel articles*, between points in the U.S.

MC 129537 (Sub-65), filed January 15, 1982. Applicant: REEVES TRANSPORTATION CO., Rt. 5, Dew's Pond Rd., Calhoun, GA 30701. Representative: John C. Vogt, Jr., 406 N. Morgan St., Tampa, FL 33602, (813) 229–6165. Transporting *plastic concentrates, plastic resins, wood pulp, lumber and building products, paper and paper products* (except in bulk), between points in AL, AR, CA, CT, FL, GA, IL, IN, IA, KS, KY, LA, MA, MI, MN, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, and WI.

MC 129537 (Sub-66), filed January 18, 1982. Applicant: REEVES TRANSPORTATION CO., Rt. 5, Dew's Pond Rd., Calhoun, GA 30701. Representative: John C. Vogt, Jr., 406 N. Morgan St., Tampa, FL 33602, (813) 229–6165. Transporting *plastic articles*, between points in AZ, CA, CO, CT, FL, GA, IL, IN, KS, LA, ME, MD, MA, MI, MN, MS, MO, NJ, NY, NC, OH, OK, OR, PA, TN, TX, VA, WA, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 139897 (Sub-9), filed January 18, 1982. Applicant: ORBAN HOFSTETTER, INC., P.O. Box 237, Orrville, OH 44667. Representative: E. H. van Deusen, P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of dairy products, between points in the U.S., under continuing contract(s) with Dairy Farm Products Co., of Orrville, OH.

MC 148917 (Sub-2), filed January 18, 1982. Applicant: KEN STAUB, JR. TRUCKING, INC., 4786 East River Road, Grand Island, NY 14072. Representative: Kenneth W. Staub, Jr. (same address as applicant), (716) 877–3080. Transporting *metal products and building materials*, between points in IL, IN, the Lower Peninsula of MI, MN, and WI, on the one hand, and, on the other, points in NY.

MC 150577 (Sub-3), filed January 18, 1982. Applicant: S. B. CAMPBELL, JR., Rt. 7, Box 1, Lubbock, TX 79401. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408, (806) 763–9555. Transporting *iron and steel articles*, between points in TX, OK, NM, KS, LA, NE, WY, AZ, GA, FL, MS, SC, AR, and TN.

MC 151717 (Sub-2), filed January 15, 1982. Applicant: MONTREAL CONTAINER TERMINALS, INC., 6360 Notre Dame St., E., Montreal, Quebec, CD H1N 2E1. Representative: Adrien R. Paquette, 200 St. James St., Suite 900, Montreal, Quebec, CD. Transporting *general commodities*, (except classes A and B explosives, household goods, items of unusual value, and those items requiring special equipment), between the ports of entry on the International Boundary line between the U.S. and Canada, on the one hand, and, on the other, points in CT, MA, MI, IL, OH, PA, and ME..

MC 151887 (Sub-1), filed January 15, 1982. Applicant: BODONA, INC., 1011 North Colony Rd., Meriden, CT 06450. Representative: Edward M. Taber, 64 Nottingham Terr., Waterburg, CT 06704; (203) 735–0939. Transporting (1) *such commodities*, as are dealt in or used by manufacturers and distributors of pens, pencils, pen parts, pen refills, writing ink, and gift boxes, between points in Rock County, WI, on the one hand, and, on the other, points in CT, MA, NJ, NY, and RI, and (2) *metal products*, between points in CT, MA, ME, NH, RI, VT, NY, NJ, PA, OH, MI, IL, IN, and WI.

MC 152717 (Sub-1), filed January 19, 1982. Applicant: STEVECO, INC., P.O. Box 484, Dickson, TN 37055. Representative: Roland M. Lowell, 501 Union St., 5th Floor, Nashville, TN 37219, (615) 255–0540. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods, commodities in bulk and those requiring special equipment), between the facilities of International Paper Company at points in CA and in and east of ND, SD, NE, CO and NM, on the one hand, and, on the other, points in the U.S.

MC 158577, filed January 18, 1982. Applicant: L & L CARTAGE CO., INC., 3193 Ladbrook, Memphis, TN 38118. Representative: Ralph D. Golden, Suite 2348, 200 North Main, Memphis, TN 38103, 1–(901)–526–1122. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with U.S. Freight Forwarder Co., Inc., of Memphis, TN.

MC 160007, filed January 18, 1982. Applicant: DeJONG TRANSPORT, 33651 Arcadian Wy., Rt. 3, Abbotsford, B.C., Canada V2S 4N3. Representative: Kenneth R. Mitchell, 2320A Milwaukee Wy., Tacoma, WA 98421, (206) 383–3998. Transporting *malt beverages*, between points in the U.S., under continuing contract(s) with Bel-Air Imports, Inc., d/b/a Berman Imports, of Los Angeles, CA.

MC 157457 (Sub-6), filed January 18, 1982. Applicant: CONGOLEUM CARTAGE CORPORATION, 2323 S. 17th St., Elkhart, IN 46514. Representative: H. Barney Firestone, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603, (312) 263–1600. Transporting *electrical machinery, metal products, furniture and fixtures, rubber and plastic articles, machinery, photographic equipment, textile mill products, and pontoon boats*, between points in Elkhart, St. Joseph and

LaGrange Counties, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160117, filed January 18, 1982. Applicant: NORTH FRANKLIN TRANSPORT, 605 N. Franklin Rd., Mt. Airy, NC 27030. Representative: Buel Green Woodie (same address as applicant), (919) 789-3548. Transporting *used automobiles*, between Cleveland, OH, Pittsburgh, PA, Washington, DC, on the one hand, and, on the other, points in Surry County, NC.

MC 160127, filed January 18, 1982. Applicant: FLAGSHIP LIMOUSINE, 31 Williams St., North Haven, CT 06473. Representative: Vincent C. Buonocore (same address as applicant), (203) 239-6095. Transporting *passengers*, between points in CT, on the one hand, and, on the other, New York, NY, Boston, MA, Newark and Atlantic City, NJ.

MC 160157, filed January 19, 1982. Applicant: ART'S TRANSPORTATION, INC., 7843 S. Exchange Ave., Chicago, IL 60617. Representative: Abraham A. Diamond, 29 So. LaSalle St., Chicago, IL 60603, (312) 236-0548. Transporting *passengers and their baggage* in the same vehicle with passengers, in round-trip, charter and special operations, beginning and ending at points in Cook, Du Page, Lake, Will, Kane, Kendall, Grundy, and McHenry Counties, IL, and Lake and Porter Counties, IN, and extending to points in the U.S.

MC 160167, filed January 18, 1982. Applicant: JOSE EDWIN GARCIA and DIANE GARCIA, d.b.a. J AND D GARCIA TRUCKING, 482 Bartlett Ave., No. 12, Hayward, CA 94541. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986-8696. Transporting *metal products*, between points in the U.S., under continuing contract(s) with Stockham Valves and Fittings, of Oakland, CA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-2099 Filed 1-28-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Research Committee of the Board for International Food and Agricultural Development; Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a)(2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the forty-second meeting of the Joint Research Committee (JRC) of the Board for International Food and Agricultural Development (BIFAD) on February 16 and 17, 1982.

The purpose of the meeting is to consider interactions of the JRC with AID in research planning and strategy; and review the Collaborative Research Support Program (CRSP).

The meeting will convene from 1:00 p.m. to 4:30 p.m. on February 16, and 8:30 a.m. to 12:00 noon on February 17. The meeting will be held in the Dynasty Room, Holiday Inn, 1850 N. Fort Myer Drive, Rosslyn, Virginia. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for this meeting permits.

Dr. James Nielson, BIFAD Support Staff is the designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Department of State, Washington, D.C. 20523 or telepone him at (202) 632-7935.

Dated: January 15, 1982.

James Nielson,

A.I.D. Advisory Committee Representative, Joint Research Committee, Board for International Food and Agricultural Development.

[FR Doc. 82-2388 Filed 1-28-82; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; New Extended Benefit Period in the State of Mississippi

This notice announces the beginning of a new Extended Benefit Period in the State of Mississippi, effective on January 17, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, the Mississippi unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State of Mississippi has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on January 2, 1982, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in that State.

Therefore, a new Extended Benefit Period commenced in that State with the week beginning on January 17, 1982.

Information for Claimants

The duration of extended benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the

individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State of Mississippi or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office of the Mississippi Employment Security Commission in their locality.

Signed at Washington, D.C., on January 25, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-2397 Filed 1-28-82; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; New Extended Benefit Period in the State of Ohio

This notice announces the beginning of a new Extended Benefit Period in the State of Ohio, effective on January 17, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, the Ohio unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State of Ohio has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on January 2, 1982, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in that State.

Therefore, a new Extended Benefit Period commenced in that State with the week beginning on January 17, 1982.

Information for Claimants

The duration of extended benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemploymet compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State of Ohio or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office of the Ohio Bureau of Employment Services in their locality.

Signed at Washington, D.C., on January 25, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-2398 Filed 1-28-82; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; New Extended Benefit Period in The State of South Carolina

This notice announces the beginning of a new Extended Benefit Period in the State of South Carolina, effective on January 10, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, the South Carolina unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State of South Carolina has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on December 26, 1981, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in that State.

Therefore, a new Extended Benefit Period commenced in that State with the week beginning on January 10, 1982.

Information for Claimants

The duration of extended benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and

who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State of South Carolina or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest employment service office of the South Carolina Employment Security Commission in their locality.

Signed at Washington, D.C., on January 22, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-2396 Filed 1-28-82; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application No. D-2263]

Proposed Exemption for Certain Transactions Involving the Laird Noller Ford, Inc., Employee Pension Benefit Plan Located in Topeka, Kansas

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the past sale by the Laird Noller Ford, Inc. Employee Pension Benefit Plan (the Plan) of certain real property (Tract B) to Mr. and Mrs. Laird Noller (the Nollers), parties in interest with respect to the Plan. Tract B was previously leased by the Plan to Laird Noller Ford, Inc. (the Employer) and to Churchill Truck Lines, Inc. (Churchill), an unrelated entity. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Plan trustee, the Nollers, the Employer and other persons participating in the transaction.

EFFECTIVE DATE: If granted, the exemption will be effective December 21, 1979.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 18, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2263. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer and the Plan trustee, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is an automobile dealership having its principal place of business in Topeka, Kansas. The Employer facility is owned by Mr. Laird Noller, the principal shareholder, and his spouse, Mrs. Donna Noller.

2. The Plan, which has been in existence since September 29, 1969, is a defined benefit plan covering 56 participants and having net assets of $86,991 for the year ending September 30, 1979. The trustee of the Plan is the First National Bank of Topeka (First National), located in Topeka, Kansas.

3. Plan assets formerly included a parcel of real property (Tract B) which consists of 1.912 acres and is located on Meriden Road and U.S. Highway 24 in Shawnee County, Kansas. Tract B was acquired by the Plan on January 4, 1971 from the M and S Development Company, Inc., an unrelated entity. The Plan purchased Tract B for $37,500. The Plan made an initial downpayment of $10,000 and obtained financing for the balance. At the time of purchase, the Plan had $50,000 in total assets.

4. Contiguous to Tract B is another parcel of real property (Tract A). Tract A is owned by the Noller Investment Company (Noller Investment), whose controlling shareholders are relatives of the Nollers. Noller Investment leases Tract A to the Employer for use as a highway truck center. In addition, the Employer uses the land in Tract B to gain access to a building situated between both strips of land.

5. On December 1, 1974, the Plan began leasing two-thirds of Tract B to Churchill for use as a warehouse facility while the one-third remaining portion of the strip was leased by the Plan to the Employer. The Plan/Churchill lease is a written lease for a four year duration and it contains one renewal option for a comparable term. Under the lease provisions, Churchill is required to pay a monthly rental of $450 and to assume expenses associated with utilities, insurance, taxes, assessments and necessary repairs. According to the exemption application, the property leased to Churchill requires extensive repairs. Therefore, it is unlikely Churchill will attempt to renew the lease beyond its termination date on December 1, 1982.

The Plan/Employer lease, which is no longer in existence was an oral net lease, the terms and conditions of which were mutually determined by First National and officers of the Employer. The monthly rental charged the Employer was proportionate to the amount paid by Churchill for the two-thirds portion of the strip. According to the exemption application, the Employer paid the Plan all rents in full. In addition, the amount paid in rent reflected the fair rental value of the one-third portion of the property.

6. Believing the transaction was covered by a statutory exemption

contained in section 414 of the Act, First National sold Tract B to the Nollers on December 21, 1979 for a cash price of $50,000. The sale did not involve the payment of any real estate fees or commissions by the Plan. The sale price represented the fair market value of the property as determined by an independent appraisal performed for First National by Mr. B. K. Buren (Mr. Buren) of Topeka, Kansas on December 14, 1979. Mr. Buren is an independent appraiser with considerable experience in real estate brokerage, property management and real estate appraisal.

7. During a routine audit of First National which was conducted by bank examiners in the summer and fall of 1980, a question was raised of whether or not the sale was covered by section 414 of the Act. This prompted the Nollers and First National to make inquiry of the Department. Accordingly, an exemption application was advised with respect to the past sale of Tract B to the Nollers. The Employer recognizes that the prior leasing of the one-third portion of Tract B constitutes a prohibited transaction. Therefore, the Employee represents it will pay all excise taxes which are applicable under section 4975(a) of the Code by reason of the past leasing arrangement, within 60 days of the publication in the **Federal Register** of a notice granting the proposed exemption.

8. In summary, it is represented that the transaction has satisfied the statutory criteria contained in section 408(a) of the Act because: (a) The sale was a one-time transaction for cash; (b) the sales price represented the fair market value of the property as determined by an independent appraisal; (c) the Plan did not incur any real estate fees or commissions in connection with the sale; (d) the Employer represents it will comply fully with the excise tax provisions of section 4975(a) of the Code with respect to the past prohibited leasing of the one-third portion of Tract B; and (e) the trustee determined that the sale was in the best interests of the Plan.

Notice to Interested Persons

Notice of the pending exemption will be given to present employees of the Employer and those former employees having a vested interest in the Plan, within fifteen (15) days of the publication of the notice of pendency in the **Federal Register.** The notice will contain a photocopy of the notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Notice will be provided by posting copies of the requested exemption at the Employer's place of business and by mailing copies to former employees.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the past sale of Tract B by the Plan to the Nollers for the cash consideration of $50,000, provided this amount was not less than the fair market value at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this exemption.

Signed at Washington, D.C., this 21st day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-1973 Filed 1-28-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2856]

Proposed Exemption for Certain Transactions Involving the Norick Employees Profit Sharing Retirement Plan Located in Oklahoma City, Oklahoma

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed loan (the Proposed Loan) of $200,000 by the Norick Employees Profit Sharing Retirement Plan (the Plan) to Norick Brothers, Inc.

(the Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan and the Employer.

DATES: Written comments and requests for a public hearing must be received by the Department on or before March 11, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D–2856. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (2) of the Act and from the santions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan that had total assets of $2,119,970 and 241 participants as of May 1, 1981. The assets of the Plan are held by Liberty National Bank and Trust Company (the Bank) of Oklahoma City, Oklahoma, as trustee (the Trustee).

2. The applicant is requesting an exemption which would permit the Plan to make the Proposed Loan to the Employer. The proceeds from the Proposed Loan would be used to assist the Employer in financing the purchase of a printing press (the Press) which costs $241,880.

3. The Proposed Loan will have: (a) A floating interest rate of 1 percent over the Bank prime rate adjusted semiannually with a floor of 14 percent; and (b) a term of five years. Repayments will be made in monthly installments to cover principal and interest. The Proposed Loan will represent approximately 9 percent of the assets of the Plan as of May 1, 1981.

4. The Proposed Loan will be secured by certain tangible assets (the Collateral) of the Employer located in Oklahoma City, Oklahoma and in Kings Mountain, North Carolina. The Collateral will include but not be limited to the Press and a Diddie-Glaser Model D–G–175 press (the Diddie Press). An appraisal performed by B. G. Wilkes Enterprises, an unrelated party with respect to the parties to the transaction, valued the Diddie Press at $75,000 as of June 5, 1981. A security agreement (the Security Agreement) and UCC financing statements (collectively, the Documents) will be executed by the Employer and the Plan recording the Plan's secured interest in the Collateral. The Documents will be duly filed in the States of Oklahoma and North Carolina. The Security Agreement provides that the Employer shall keep the Collateral free of any liens, in good operating condition and repair and shall keep the Collateral fully insured against fire, theft and other casualty loss throughout the term of the Proposed Loan. It is represented that the Plan will be the named insured on all policies insuring the Collateral.

5. An unrelated party, Don W. Fitzgerald (Fitzgerald), chairman of the board of directors of MetroBank of Oklahoma City and First Wagoner Bank and Trust Company of Wagoner, Oklahoma, has been appointed as an independent fiduciary with respect to this transaction effective August 17, 1981. Fitzgerald has over five years of experience in the managing of employee pension benefit plans. It is represented that after reviewing the nature of the proposed transaction and the accompanying security arrangements, Fitzgerald believes that the Proposed Loan is in the best interests of the Plan, its participants and their beneficiaries and is protective of their rights. Fitzgerald will monitor all terms and conditions of the Proposed Loan, enforce collection of the Proposed Loan in the event of a default and will require annual appraisals of the Collateral, the cost of which will be borne by the Employer. Fitzgerald will also require the Employer to provide additional collateral within 30 days when the market value of the Collateral is less than 150 percent of the remaining unpaid balance of the Proposed Loan. In such an instance, Fitzgerald will be provided with appraisals of the additional collateral. It is represented that if the Collateral is found to be less than 150 percent and additional collateral cannot be provided, the Employer shall deposit with Fitzgerald the required cash amount within 30 days of such finding, so that the value of the Collateral and the cash will always represent 150 percent of the outstanding balance of the Proposed Loan.

6. In summary, the applicant represents that the Proposed Loan satisfies the statutory criteria of section 408(a) of the Act because: (a) Fitzgerald has determined that the Proposed Loan is in the best interests of the Plan participants and beneficiaries and protective of their rights; (b) the Proposed Loan will at all times be secured by the Collateral and cash with a value of at least 150 percent of the outstanding balance of the Proposed Loan; (c) the Collateral has been appraised and will be annually appraised by an independent appraiser, the cost of which was/will be borne by the Employer; and (d) the Plan will have a perfected first security interest in the Collateral.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all Plan participants and beneficiaries. Such notice will either be personally delivered to such interested persons or will be mailed to such interested persons at their last known personal residence by first class mail. Such notice will contain a copy of the notice of pendency of such exemption published in the **Federal Register** and will timely inform such interested persons within 10 days of the time of the notice of pendency of exemption is published in the **Federal Register** of their right to comment and their right to request a hearing within the period set forth in the notice of pendency of exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to and administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Proposed Loan as described herein, provided that the terms and conditions of the Proposed Loan will be and remain at least as favorable to the Plan as an arm's-length transaction would be with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 21st day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–1974 Filed 1–28–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2333]

Proposed Exemption for Certain Transactions Involving the Smith & Schnacke Retirement Trust Located in Dayton, Ohio

AGENCY: Office of Pension and Welfare Benefit programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt for a period of five years certain proposed loans of money by the Smith & Schnacke Retirement Trust (the Trust), which consists of a defined benefit, defined contribution and target benefit plan (the Plan(s)), to Smith & Schnacke (the Employer), the sponsor of the Plans. The proposed exemption, if granted would affect the Plans, the Employer, the participants and beneficiaries of the Plans, and other persons participating in the transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 15, 1982.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2333. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Campagna of the Department, telephone (202) 523–7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Employer is a Legal Professional Association with offices in Dayton, Columbus and Cincinnati, Ohio. As of September 30, 1980, the Plans had 154 participants and total assets of $2,118,542. The Trust is a commingled pool of all of the assets of the Plans. Each Plan has a proportionate interest in the Trust. The trustee of the Trust is the

Central Trust Company, N.A., of Cincinnati, Ohio.

2. The Employer is requesting an exemption to enter into a line of credit agreement (the Line of Credit Agreement) with the Trust whereby the Trust will periodically lend to the Employer amounts of money up to an aggregate at any point in time of the lesser of 57 percent of the value of certain tangible personal property and a leasehold interest (the Collateral) owned by the Employer or 25 percent of the assets of the Trust less the outstanding debt owed by the Employer to the Trust by virtue of an administrative exemption granted by the Department (the Past Exemption) on March 17, 1981 (46 FR 17169) involving a loan by the Trust to the Employer of approximately 6 percent of the assets of the Trust.

3. The loans made under the Line of Credit Agreement will occur over a five year period, the first day of which would be the day the grant of an exemption for the transaction is published in the **Federal Register**. Each loan would have a maturity of ninety days. Upon maturity, the entire principal amount of each loan plus accrued interest will be due and payable. All outstanding loans will mature and become due and payable on or before the last day of such five year period. The interest rate for any loan granted under the Line of Credit Agreement will be ¾% above the prime rate charged by the commercial department of the First National Bank of Cincinnati, Ohio, (the Bank) but in no event less than 10% per annum.

4. The Collateral securing the loans made under the Line of Credit Agreement will consist of an assignment by the Employer to the Trust of the Employer's leasehold interest (the Leasehold) in the 3rd, 18th, 19th and 20th floor of its Dayton office. The Collateral will also consist of office furnishings, typewriters, dictating equipment, data processing and other office equipment (the Office Equipment) as well as the law books and library materials (the Law Books) located in the Columbus, Dayton and Cincinnati offices of the Employer, and not subject to any prior security interest by virtue of the Past Exemption. The collateral used as security for the subject loan of the Past Exemption was all the office equipment located at the Employer's Dayton office. An independent appraisal performed by J. R. Remick, Inc., real estate counselors of Dayton, Ohio, places the fair market value of the Leasehold, as of April 25, 1981, at approximataely $1,071,600. An appraisal performed by Professional Books Service an independent law book dealer of Dayton, Ohio, valued the Law Books as of June 19, 1980, at $106,249. An appraisal performed by S & V Equipment, Inc., an independent office equipment dealer of Dayton, Ohio valued the Office Equipment, as of June 19, 1980, at $105,700. As a result, the Collateral will have a combined value of $1,283,549.

5. A security agreement (the Security Agreement) and UCC financing statement will be executed by the Employer and the Trust recording the Trust's security interest in the Office Equipment and the Law Books. Both instruments will be filed with the Secretary of State of Ohio and the recorder's office in each county of Ohio in which the Employer has a place of business. No other lender has a secured interest in any item of the Office Equipment or Law Books. An Assignment of Rents and Leases will be filed in the Montgomery County, Ohio Recorder's Office reflecting the Trust's secured interest in the Leasehold. No other lender has a secured interest in the Leasehold. The Collateral will be kept fully insured against theft, fire and other casualty loss throughout the duration of the Line of Credit Agreement. All of the proceeds of such insurance will be payable to the Trust. If the Employer elects to increase the value of the Collateral by the addition of new assets not encompassed by the Security Agreement, by acceptance and approval by the Bank, an amended Security Agreement and UCC financing statement will be executed and filed with the appropriate offices of the state of Ohio.

6. The Bank is independent of the parties to the transaction, except that the Bank acts as investment manager for a portion of the assets of the Trust and acts as the independent fiduciary for the Trust with respect to the subject loan of the Past Exemption. As investment manager the Bank is solely responsible for investment decisions. The Bank will determine prior to the grant of any loan under the Line of Credit Agreement whether the loan is in the best interests of the Trust and will also monitor the terms of the loans and enforce collection on the loans in the event of a default. The Bank may terminate the Line of Credit Agreement at any time. The Bank will also monitor the Collateral so that the value of the Collateral will at no time fall below 175% of the principal of all outstanding loans made under the Line of Credit Agreement. The Bank will, at any time in its discretion, require the Employer to obtain subsequent independent appraisals of the Collateral to assure its value remains at 175% of the principal of all outstanding loans. In addition, the Law Books and Office Equipment will be re-appraised upon publication in the **Federal Register** of the grant of the exemption and all Collateral will be appraised each year during which amounts are owed the Trust by the Employer under the Line of Credit Agreement.

7. Each loan under the Line of Credit Agreement will be represented by a promissory note signed by an authorized representatiave of the Employer. Upon execution of the Line of Credit Agreement the 48 shareholders of the Employer will execute a guarantee whereby each shareholder personally obligates himself, jointly and severably for repayment of any and all loans made under the Line of Credit Agreement in the event of default. The net worth of all of the shareholders of the Employer, as of August 12, 1981, was in excess of $1,000,000. The 48 shareholders of the Employer have similarly guaranteed the repayment of the subject loan of the Past Exemption.

8. In summary, the applicants represent that the proposed loans under the Line of Credit Agreement satisfies the statutory criteria of section 408(a) of the Act because: (1) The Bank will approve the Line of Credit Agreement and each loan under the Line of Credit Agreement if it determines the loan is in the best interests of the Trust; (2) the Bank will monitor the terms of the loans; (3) the interest rate for each loan will be ¾% above the prime rate charged by the Bank, but in no event less than 10% per annum; (4) the fair market value of the Collateral has been determined by independent appraisers; (5) the Collateral will at all times during the term of the Line of Credit Agreement have a value of at least 175% of the principal amount of any and all of the outstanding loans; (6) the 48 shareholders of the Employer personally guarantee repayment of the loans in the event of a default; and (7) the loans will be for a relatively short period of time.

Notice to Interested Persons

Notice of the proposed exemption will be furnished to all active participants in the Plans and all former participants and beneficiaries who have a vested interest in benefits under the Plans. Such notice will contain a copy of the notice of pendency as published in the **Federal Register** as well as a statement informing all such interested persons of their right to comment or request a hearing in regard to the proposed exemption. The notice will be provided within 15 days of publication of the notice of pendency to all interested

persons by first class mail or by posting on all bulletin boards and other appropriate places throughout the facilities of the Employer.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1985). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed loans of money under the Line of Credit Agreement by the Trust to the Employer for a period of five years provided that the terms of the loans are at least as favorable to the Trust as the Trust could obtain in transactions with unrelated parties.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 21st day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–1975 Filed 1–28–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2902]

Proposed Exemption for a Certain Transaction Involving the Southwestern Stationery and Bank Supply of Ponca City, Inc. Employee Profit Sharing Plan and Trust Located in Ponca City, Okla.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a certain parcel of real property by the Southwestern Stationery and Bank Supply of Ponca City, Inc. Employee Profit Sharing Plan and Trust (the Plan) to the Southwestern Stationery and Bank Supply, Inc. of Ponca City (the Employer). The proposed exemption, if granted, would affect the Employer, the Plan and its participants and beneficiaries, and others participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 22, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2902. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Department of Labor, telephone (202) 523–7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), and 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file

with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with 25 participants. The trustee of the Plan is the Liberty National Bank and Trust Company of Oklahoma City (the Trustee). The Plan had total assets of $834,463 as of May 31, 1981.

2. In 1972 the Plan purchased Lots 17 and 18 of Block 37 of the Hartman Addition, a subdivision of Ponca City, also known as 109 West Grand Avenue, Ponca City, Kay County, Oklahoma (the Property) for $35,000. The Property is now being leased to an unrelated party.

3. The Employer wishes to purchase the Property from the Plan for the cash amount of $85,000 to expand its existing business location which is adjacent to the Property. This proposed purchase price represents the fair market value of the Property as determined by an independent appraisal performed by the Oklahoma Appraisal Company, Inc. on May 27, 1981. The appraiser states that $85,000 is a reasonable estimate of value whether the Property is placed on the open market to secure a prospective purchaser or offered to the adjacent owner for purchase.

4. The Trustee, who is independent of the Employer, agrees that the proposed transaction is advisable for the Plan.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because: (1) The sale would be a one-time cash transaction; (2) the Plan will be relieved of the burden of owning and operating rental property; (3) the Plan will be provided with greater liquidity which will enable it to more greatly diversify its investments; (4) the Plan will receive fair market value for the sale as determined by an independent appraiser; (5) the Employer will pay all the legal costs, closing costs and recording fees connected with the sale; and (6) the Trustee represents that the proposed transaction is in the interests of the Plan.

Notice to Interested Persons

Notice of the pending exemption as published in the **Federal Register** will be provided to all participants and beneficiaries of the Plan. Upon publication of the Notice of Pendency in the **Federal Register**, all such persons will be provided a copy of the Notice within 15 business days after publication and will be advised of their right to comment and/or request a hearing in connection with the proposed exemption. Notice will be given to all interested persons by personal delivery and by posting at the Employer's place of business.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogration of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale of the Property by the Plan to the Employer for $85,000 provided that this amount is not less than fair market value of the Property at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 21st day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–1976 Filed 1–28–82; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of Meeting

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is given of the twenty-fifth meeting of the National Commission for Employment Policy, at the International Hotel, Massachusetts at Vermont Avenue, N.W., Washington, D.C.

DATE: February 18, 1:00 p.m.–5:30 p.m.; February 19, 8:30 a.m.–4:00 p.m.

STATUS: This meeting will be open to the public.

MATTERS TO BE DISCUSSED: Commission members will consider their position on CETA reauthorization, including options for the continuation of the NCEP. They will hear staff reports updating work on labor market difficulties of both Hispanics and older workers. The staff will present a preliminary work plan for

research on small business and plans for a researchers conference to be held in the spring.

FOR FURTHER INFORMATION CONTACT:
Mr. Ralph E. Smith, Acting Director, National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, D.C. 20005 (202–724–1553).

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established as title V of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. People wishing to submit written statements to the Commission that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the Acting Director at least two days before the meeting and not more than seven days after the meeting.

In addition, members of the general public may rquest to make oral presentations to the Commission, time permitting. Such statements must be applicable to the announced agenda and written application must be submitted to the Acting Director at least three days before the meeting. This application should include: name and address of applicant, subject of presentation, relation to agenda, amount of time needed, individual's qualifications to speak on the subject, and a statement justifying the need for an oral rather than written presentation.

The Commission Chairman has the right to decide to what extent public oral presentations may be permitted at the meeting. Oral presentations will be limited to statements of facts and views and shall not include any questioning of Commission members or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's headquarters, 1522 K Street, N.W., Suite 300, Washington, D.C. 20005.

Signed in Washington, D.C., this 19th day of January 1982.

Ralph E. Smith,
Acting Director.

[FR Doc. 82–2399 Filed 1–28–82; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel (Print/Drawing/Books); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Print/Drawing/Books) to the National Council on the Arts will be held on February 18–19, 1982, from 9 a.m.–5 p.m. in the Consul Room of the Columbia Plaza, 2400 Virginia Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,
Director, Office of Council and Panel Operations, National Endowment for the Arts.
January 20, 1982.

[FR Doc. 82–2275 Filed 1–28–82; 8:45 am]
BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–482]

Availability of Draft Environmental Statement for Wolf Creek Generating Station, Unit No. 1

Notice is hereby given that a Draft Environmental Statement (NUREG–0878) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Wolf Creek Generating Station, Unit 1, by Kansas Gas & Electric Company, Kansas City Power and Light Company and Kansas Electric Power Cooperative, Inc. The plant is located in Coffey County, Kansas, approximately 28 miles east-southeast of Emporia, Kansas.

This Draft Environmental Statement (DES) addresses the aquatic, terrestrial, radiological, social and economic costs and benefits associated with normal station operation. Also considered are station accidents, their likelihood of occurrence and their consequences. Finally, the statement presents an updated discussion of a need for the facility since the construction permit application.

This DES is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 and in the William Allen White Library, Emporia State University, 1200 Commercial Street, Emporia, Kansas 66801. The Draft Environmental Statement is also being made available at the State Clearinghouse, Division of the Budget, Room 152 E. Capitol Building, Topeka, Kansas 66612. Requests for copies of the DES (NUREG–0878) should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control.

Interested persons may submit comments on this DES for the Commission's consideration. Federal, State, and specified local agencies are being provided with copies of the DES (local agencies may obtain these documents upon request).

Comments by Federal, State, and local officials, or other members of the public received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and in the William Allen White Library, Emporia State University, 1200 Commercial Street, Emporia, Kansas 66801.

After consideration of comments submitted with respect to the DES, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the **Federal Register**. Comments are due by March 15, 1982.

Comments on this report from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of January 1982.

For the Nuclear Regulatory Commission.

B. J. Youngblood,
Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 82–2385 Filed 1–28–82; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50-329A and 50-330A]

Consumers Power Co.; Receipt of Antitrust Information

The Consumers Power Company as owner of the Midland Plant, Units 1 and 2, has submitted antitrust information in connection with its plans to operate two pressurized water reactors located in Midland County, Michigan. The data submitted contain antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of staff antitrust review of the above-named application, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, request for reevaluation may be submitted for a period of 60 days after the date of the **Federal Register** notice. The results of any reevaluation that is requested will also be published in the **Federal Register** and copies sent to the Washington and local public document rooms.

A copy of the general information portion of the application for operating licenses and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room at the Grace Dow Memorial Library, 1710 W. St. Andrews Road, Midland, Michigan 48640.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensee's activities since the construction permit antitrust review for the above-named plant should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Economic Analysis Branch, Nuclear Reactor Regulation, on or before April 5, 1982.

Dated at Bethesda, Maryland, this 25th day of January 1982.

For the Nuclear Regulatory Commission.

Calvin W. Moon,

Acting Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82-2379 Filed 1-28-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382-OL]

Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3); Hearing

January 26, 1982.

The evidentiary hearing will commence at the following location on March 23, 1982 to receive evidence regarding the application of Louisiana Power and Light Company to operate the Waterford Steam Electric Station, Unit 3, location on the Applicant's site in St. Charles Parish, Louisiana: U.S. Court of Appeals, 5th Circuit, East Courtroom, Room 223, 600 Camp Street, New Orleans, Louisiana 70130-3479.

Initially, limited appearance statements will be taken between 9:00 a.m. and 5:00 p.m. on March 23 and 24, 1982. Oral limited appearance statements will be limited to ten (10) minutes each but written statements may be submitted without limitation on length.

A limited appearence statement is not presented under oath and is not evidence—it serves to alert the Board and the parties to areas in which evidence need be adduced. Those individuals desiring to make limited appearance statements should promptly notify Mr. Chase Stephens, Chief, Docketing and Service Branch, Office of the Secretary of the Nuclear Regulatory Commission, Washington, D.C. 20555.

After the taking of the limited appearance statements, the Board will then hear evidence presented by the parties. These formal evidentiary sessions will begin at 9:00 a.m. and recess at 5:00 p.m. on the following days: March 25 [1]-March 26; March 29-April 2; and, if necessary, April 5-7, 1982.

The public is invited to attend the limited appearance sessions as well as the formal evidentiary hearing.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Administrative Judge.

[FR Doc. 82-2380 Filed 1-28-82; 8:45 am]

BILLING CODE 7590-01-M

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[1] During any lulls in the taking of limited appearance statements on March 24, 1982, the Board will proceed to hear evidence presented by the parties.

[Docket No. 50-537]

United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant); Amended Notice of Prehearing Conference

January 25, 1982.

Please take notice that a prehearing conference will commence Tuesday, February 9-10, 1982, beginning at 9:00 a.m., local time, at the Oak Ridge School Administration Building in the Conference Seminar Room, located at New York and Newcomb Avenues, Oak Ridge, Tennessee. This prehearing conference will supersede a conference previously noticed for February 2, and it will consider status reports on all aspects of this proceeding, all pending motions, and suggestions by the parties for an expendited schedule to govern further activities.

On January 21, 1982, the Intervenors Natural Resources Defense Council, Inc. (NRDC) and the Sierra Club filed a motion to vacate the January 18 Order establishing a prehearing conference, and to extend until March 15, 1982 the time to respond to the Applicant's motion to lift the suspension of proceedings. This motion is denied.

The Intervenors' first point, that it did not have ten (10) days to respond to the motion, is moot because they have now had more than ten (10) days since the Applicant's motion was filed on January 11, 1982. The Board has considered the Intervenors' response before issuing the instant amended notice of prehearing conference. It should also be noted that 10 CFR 2.730, as amended, provides that such time period for answers to motions may be set at "such other period as the * * * presiding officer may prescribe." Section 2.711 also provides that the period of time prescribed for performing an action "may for good cause be extended or shortended" by the presiding officer. The Applicants' request for a prehearing "at the earliest possible date" showed good cause in light of its recital of the President's statement of October 8, 1981, and the action taken by the Commission establishing procedures for considering the Section 50.12 request for authorization to commence site preparation activities.

The Intervenors' motion contains conclusory statements without setting forth bases compelling such conclusions. It is contended that somehow the § 50.12 exemption request pending before the Commission requires delaying the requested prehearing conference to consider limited work authorization

(LWA) matters. The Applicants' motion stated that if the § 50.12 request is granted by the Commission, the Applicants must still obtain all findings prescribed by 10 CFR 50.10(e)(3)(i)–(ii) as prerequesities for LWA–2. If the request is not granted, LWA–1 would be sought and therefore the Applicants would have to obtain all findings prescribed by 10 CFR 50.10(e)(1)–(2). The Intervenors do not address this contention, let alone demonstrate its invalidity. A generalized objection to an LWA proceeding is not persuasive, and there is no conflict between the Board holding a prehearing conference to establish an LWA hearing and the pending matters to be decided by the Commission.

The instant licensing proceeding for the Clinch River Breeder Reactor Plant (CRBRP) has been pending for a number of years. The issues and contentions have been the subject of a number of decisions by the Appeal Board and the Commission itself. The schedule previously adopted by this Board on March 28, 1977, provided for the termination of discovery by April 22, 1977, and the commencment of a LWA evidentiary hearing on June 14, 1977. The action then taken by the previous administration resulted in the suspension of proceedings until recently. However, there has been no showing of significant changes of circumstances that would materially affect site-specific issues. The parties will have an opportunity to address these and other relevant matters at the rescheduled prehearing conference set for February 9–10, 1982.

Accordingly, the Intervenors' motion to vacate the order establishing a prehearing conference and for an extension of time until March 15, 1982, to respond to the Applicant's motion to lift the suspension is denied.[1]

Dated at Bethesda, Maryland this 25th day of January, 1982.

It is so ordered.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 82-2381 Filed 1-28-82; 8:45 am]

BILLING CODE 7590-01-M

[1] The Applicants' motion was filed on January 11, 1982, and it was served by hand delivery on that date to counsel for these Intervenors. The Intervenor's instant motion recites that it was "delivered by hand this 21st day of January, 1982" to (among others) the Chairman and Judge Linenberger of the Licensing Board. However, that statement is not accurate. Copies of such motion were delivered to those Board Members on January 22, 1982, at 2:22 p.m. according to the time stamp, and such delivery was not by hand.

[Docket No. 50-87]

Westinghouse Nuclear Training Reactor; Consideration of Application for Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R–119, issued to the Westinghouse Electric Corporation, for operation of the nuclear training reactor located at Zion, Illinois.

The renewal would extend the expiration date of Facility License No. R–119 to January 28, 2002, in accordance with the licensee's timely application for renewal dated December 18, 1981 and amended by letter dated January 5, 1982.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 1, 1982, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity.

Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representatives for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 324–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller; (petitioner's name and telephone number); (date petition was mailed); (Westinghouse Nuclear Training Reactor) and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated December 18, 1981, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Dated at Bethesda, Maryland this 25th day of January 1982.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 82-2384 Filed 1-28-82; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A82-5; Order No. 417]

Webb City, Oklahoma 74654; Filing of Appeal

Issued: January 25, 1982.

On January 21, 1982, the Commission received a letter from Claudine and Janes Simmons (hereinafter "Petitioners"), concerning alleged United States Postal Service plans to close the Webb City, Oklahoma post office. Although the letter makes no explicit reference to the Postal Reorganization Act, we believe it should be construed as a petition for review pursuant to 404(b) of the Act [39 U.S.C. 404(b)], so as to preserve Petitioner's right to appeal which is subject to a 30-day time limit.[1] the petition does not conform perfectly with the Commission's rules of practice, which also require a petitioner to attach a copy of the Postal Service's Final Determination to the petition.[2] However, section 1 of the Commission's rules of practice calls for a liberal construction of the rules to secure just and speedy determination of issues.[3]

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "ensure that such persons will have an opportunity to present their views."[4] The petition requests that the decision to close the Webb City post office be kept open. From the face of the petition it is unclear whether any hearings were held and whether a determination has been made under 39 U.S.C. 403(b)(3). (Petitioner failed to supply a copy of the Postal Service's Final Determination, if one is in existence.) The Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[5]

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.[6]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to close post offices. The effect on the community is also a mandatory consideration under 404(b)(2)(A) of the Act.

The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the discontinuance of post offices.[7]

Upon preliminary inspection, the petition appears to raise the following issues of law:

1. Did the Postal Service consider the effect of the Webb City post office closing on the community it served, in conformance with the "effect on community" standards of § 404(b)(2)(A)?

2. Whether the Postal Service's actions are consistent with the statutory requirement that the Postal Service provide a maximum degree of effective and regular postal service to rural areas, communities and small towns where post offices are not self-sustaining [39 U.S.C. 404(b)(2)(C)].

Other issues of law may become apparent when the Commission has had the opportunity to examine the determination made by the Postal Service. Such additional issues may emerge when the parties and the Commission review the Service's determination for consistency with the principles announced in *Lone Grove, Texas, et al.*, Docket Nos. A79-1, *et al.* (May 7, 1979), and the Commission's subsequent decisions on appeals of post office closings and consolidations. The determination may be found to resolve adequately one or more of the issues involved in the case.

In view of the above, and in the interest of expediting this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 20 days of receiving the determination and record pursuant to section 113 of the rules of practice (39 CFR 3001.113) make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on the Petitioner by the Service.

In briefing the case or in filing any motion to dismiss for want of prosecution in appropriate circumstances the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in section 404(b) cases,[8] and none is being appointed. The Commission orders that

(A) The letter of January 21, 1982 from Claudine and James Simmons be construed as a petition for review pursuant to section 404(b) of the Act [39 U.S.C. 404(b)].

(B) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

(C) The Postal Service shall file the administrative record in this case on or before February 5, 1982, pursuant to the Commission's rules of practice [39 CFR 3001.113(a)].

[1] 39 U.S.C. 404(b)(5). 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-11. Our rules of practice governing these cases appear at 39 CFR 3001.110 et seq.

[2] 39 CFR 3001.111(a).

[3] 39 CFR 3001.1.

[4] 39 U.S.C. 404(b)(1).

[5] 39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

[6] 39 U.S.C. 101(b).

[7] 42 FR 59079-85 (November 17, 1977); the Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

[8] In the Matter of Gresham, S.C., Route #1, Docket No. A78-1 (May 11, 1978).

By the Commission.

David F. Harris,

Secretary.

Appendix

January 21, 1982, Filing of Petition.
January 25, 1982, Notice and Order of Filing of Appeal.
February 5, 1982, Filing of record by Postal Service [*see* 39 CFR 3001.113(a)].
February 10, 1982, Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
February 22, 1982, Petitioner's initial brief [*see* 39 CFR 3001.115(a)].
March 9, 1982, Postal Service answering brief [*see* 39 CFR 3001.115(b)].
March 24, 1982:
(1) Petitioner's reply brief, should petitioner choose to file such brief [*see* 39 CFR 3001.115(c)].
(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
May 21, 1982, Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 82-2357 Filed 1-28-82; 8:45 am]

BILLING CODE 7715-01-M

Notice of Visits to Publishers' Clearing House, New York

January 25, 1982.

Notice is hereby given that Acting Chair Janet D. Steiger, Commissioner Simeon M. Bright, and one staff person will visit the facilities of Publishers' Clearing House in Fort Washington, Long Island, New York, and Mailmen, Inc., Hauppauge, Long Island, New York, on Wednesday, January 27, 1982, for the purpose of acquiring general knowledge of third-class mailing and fulfillment operations.

A report of the visits will be on file in the Commission's docket room.

David F. Harris,

Secretary.

[FR Doc. 82-2358 Filed 1-28-82; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12174; 812-5001]

Great Lakes Money Fund, Inc.; Filing of Application

January 20, 1982.

Notice is hereby given that Great Lakes Money Fund, Inc. ("Applicant") 100 Renaissance Center Detroit, Michigan 48243, a no-load, open-end, diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on October 23, 1981, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share according to the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it intends to operate as a "money market" fund and is designed as an investment vehicle for investors with temporary or short-term reserves. The application states that the investment objective of Applicnt is to obtain maximum current income consistent with safety of capital and the maintenance of liquidity. Applicant represents that to obtain this objective, it will invest in high-quality money market instruments consisting of (i) obligations, such as notes, bills or bonds, issued by or guaranteed as to principal and interest by the government of the United States or its agencies or instrumentalities; (ii) instruments of U.S. banks or other financial institutions, providing that the aggregate investment made in any one such financial institution is limited to a principal amount (presently $100,000) that is insured in full by the Federal Deposit Insurance Corporation ("FDIC") or the Federal Savings and Loan Insurance Corporation ("FSLIC"); (iii) U.S. dollar-denominated time deposits, negotiable certificates of deposit, commercial paper and bankers' acceptances of the 150 largest (in terms of assets) U.S. banks and their branches located outside of the U.S. and of the U.S. branches of the 50 largest (in terms of assets) foreign commercial banks; (iv) short-term corporate debt instruments (commercial paper or variable amount master demand notes), with maturities not exceeding nine months, which at the time of purchase (a) will be rated "A–1" or "A–2" by Standard & Poor's Corporation or "Prime 1" or "Prime 2" by Moody's Investors Service, Inc., or (b) if not rated, issued by a company which at the date of investment has an outstanding debt issue rated at least "A" by Standard & Poor's or by Moody's and as to which the board of directors has made an independent determination that the instrument presents minimal credit risks and is of "high quality"; (v) corporate bonds and debentures, which at the time of purchase have a rating of at least "AA" by Standard & Poor's or "Aa" by Moody's; (vi) certain repurchase agreements with respect to obligations which it is authorized to accept. Applicant submits that it will not enter into repurchase agreements of more than one week's duration if more than 10% of its net assets would be so invested. Applicant represents that it may enter into repurchase agreements with broker-dealers and commercial banks, including the National Bank of Detroit, the Custodian of Applicant. Applicant asserts that Unified Management Corporation, an investment adviser to five mutual funds and registered under the Investment Advisers Act of 1940, will act as investment adviser to Applicant.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 states further that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of this application, the Commission expressed its view that, among other things: (1) Rule 2a–4 requires portfolio instruments of "money market" funds to be valued with reference to market factors and (2) it would be inconsistent with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over sixty-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests an

exemption from Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its portfolio securities using the amortized cost method of valuation.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act, 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.

In support of the relief requested, Applicant submits that its shareholders would have the convenience of determining the value of their holdings by knowing the number of shares they hold. Applicant concludes that the task of maintaining an investment record would be simplified and, absent unusual circumstances, the amortized cost valuation will represent the fair value of Applicant's portfolio investments.

Applicant represents that in anticipation of making the foregoing request, Applicant's board of directors adopted resolutions agreeing to the following conditions being imposed on the granting of such order.

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by Applicant's board of directors shall be the following:

(a) Review by the board of directors, as it deems appropraite and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and maintenance of records of such review. To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources;

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds one-half of one percent, a requirement that the board will promptly consider what action, if any, should be initiated; and

(c) Where the board believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity that exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above; and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of director's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments that the board of directors determines present minimal credit risks, and that are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

Notice is further given that any interested persons may, no later than February 16, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–2284 Filed 1–28–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12179; 812-4939]

Shearson FMA Cash Fund; Filing of Application

January 25, 1982.

Notice is hereby given that Shearson FMA Cash Fund ("Applicant"), Two World Trade Center, New York, New York 10048, an open-end, diversified, management company registered under the Investment Company Act of 1940 ("Act"), filed an application on August 11, 1981, and amendments thereto on January 6, 1982, and January 20, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized as a Massachusetts business trust on July 24, 1981, and registered under the Act on July 31, 1981. Applicant further states that its investment adviser is Bernstein-Macaulay, Inc. ("Adviser"), a wholly-owned subsidiary of Shearson/American Express Inc. ("Shearson"), and that The Boston Company Advisors, Inc. ("Boston"), an indirect wholly-owned subsidiary of Shearson, will act as subadviser and administrator for Applicant. According to the application, shares of the Applicant will be offered only in connection with a Financial Management Account Program ("Management Account"). Applicant states that a Management Account will be a financial services account linking (1) a conventional securities margin account ("Securities Account"); (2) participation in one of three "money market" funds, one of which is the Applicant; (3) an American Express Gold Card ("Gold Card") provided by American Express Company; and (4) a checking privilege on an account maintained by Provident National Bank. According to the application, any cash in a Management Account participant's Securities Account not arising from a loan and thus transferable without giving rise to interest charges will be automatically invested in whichever "money market" fund the participant selects pending utilization of such monies in the Securities Account, through the Gold Card, or through the checking privilege.

Applicant represents that its investment objective is to maximize current income to the extent consistent with preservation of capital and maintenance of liquidity by investing in debt obligations consisting of securities issued or guaranteed by the United States Government or its agencies or instrumentalities; time deposits and certificates of deposit, including those issued by domestic banks, foreign branches of domestic banks, domestic branches of foreign banks and savings and loan and similar associations; bankers acceptances; repurchase agreements; and high grade commercial paper.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors.

Rule 22c–1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a–4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at a current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant requests an exemption from the provisions of Section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit it to value its portfolio securities using the amortized cost method of valuation. In support of its request, Applicant represents that its board of trustees has determined that, absent unusual or extraordinary circumstances, amortized cost value represents fair value of its portfolio securities and that the amortized cost method of valuation is preferable and appropriate for the Applicant. Applicant states that valuation of its assets on the amortized cost basis enables the maintenance of a stable price per share while at the same time allowing a steady flow of investment income demanded by investors. In addition, Applicant states that given the nature of its policies and expected operations, there will normally be a relatively negligible discrepancy between the market value and the amortized cost value of securities held in the Applicant's portfolio.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation 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.

Applicant asserts that its application meets the standards of Section 6(c) of the Act in light of its management policies, and consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of trustees of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of trustees of the Applicant shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of trustees will promptly consider what action, if any, should be initiated by it.

(c) Where the board of trustees believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of trustees determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of trustees.

6. Applicant will include in each of its quarterly reports, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than February 16, 1982, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-2285 Filed 1-28-82; 8:45 am]

BILLING CODE 8010-01-M

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of trustees in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) Quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12180; 812-4942]

Shearson FMA Government Fund; Filing of Application

January 25, 1982.

Notice is hereby given that Shearson FMA Government Fund ("Applicant"), Two World Trade Center, New York, New York 10048, an open-end, diversified, management company registered under the Investment Company Act of 1940 ("Act"), filed an application on August 11, 1981, and amendments thereto on January 6, 1982, and January 20, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized as a Massachusetts business trust on July 24, 1981, and registered under the Act on July 31, 1981. Applicant further states that its investment adviser is Bernstein-Macaulay, Inc. ("Adviser"), a wholly-owned subsidiary of Shearson/American Express Inc. ("Shearson"), and that The Boston Company Advisors, Inc. ("Boston"), an indirect wholly-owned subsidiary of Shearson, will act as subadviser and administrator for Applicant. According to the application, shares of the Applicant will be offered only in connection with a Financial Management Account Program ("Management Account"). Applicant states that a Management Account will be a financial services account linking (1) a conventional securities margin account ("Securities Account"); (2) participation in one of three "money market" funds, one of which is the Applicant; (3) an American Express Gold Card ("Gold Card") provided by American Express Company; and (4) a checking privilege on an account maintained by Provident National Bank. According to the application, any cash in a Management Account participant's Securities Account not arising from a

loan and thus transferable without giving rise to interest charges will be automatically invested in whichever "money market" fund the participant selects pending utilization of such monies in the Securities Account, through the Gold Card, or through the checking privilege.

Applicant represents that its investment objective is to maximize current income to the extent consistent with preservation of capital and maintenance of liquidity by investing in debt obligations consisting of securities issued or guaranteed by the United States Government or its agencies or instrumentalities; time deposits and certificates of deposit, including those issued by domestic banks, foreign branches of domestic banks, domestic branches of foreign banks and savings and loan and similar associations; bankers acceptances; repurchase agreements; and high grade commercial paper.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors.

Rule 22c–1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a–4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant requests an exemption from the provisions of Section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit it to value its portfolio securities using the amortized cost method of valuation. In support of its request, Applicant represents that its board of trustees has determined that, absent unusual or extraordinary circumstances, amortized cost value represents fair value of its portfolio securities and that the amortized cost method of valuation is preferable and appropriate for the Applicant. Applicant states that valuation of its assets on the amortized cost basis enables the maintenance of a stable price per share while at the same time allowing a steady flow of investment income demanded by investors. In addition, Applicant states that given the nature of its policies and expected operations, there will normally be a relatively negligible discrepancy and between the market value and the amortized cost value of Securities held in the Applicant's portfolio.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation 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.

Applicant asserts that its application meets the standards of Section 6(c) of the Act in light of its management policies, and consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of trustees of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stablize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of trustees of the Applicant shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of trustees will promptly consider what action, if any, should be initiated by it.

(c) Where the board of trustees believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of trustees in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of trustees determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of trustees.

6. Applicant will include in each of its quarterly reports, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than February 16, 1982, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–2286 Filed 1–28–82; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–11347]

Standard Oil Co.; Application and Opportunity for Hearing

January 21, 1982.

Notice is hereby given that The Standard Oil Company, an Ohio corporation (the "Applicant"), has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission that the trusteeships of Manufacturers Hanover Trust Company ("Manufacturers Hanover") under five indentures, one heretofore qualified under the Act and four which were not qualified under the Act because of the exemption contained in Section 304(a)(4) of the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers Hanover Trust Company from acting as trustee under any of such indentures.

The Applicant alleges that:

1. It has issued and outstanding $100,000,000 in aggregate principal amount of its 7.60% Debentures Due 1999 (the 7.60% Debentures) under an indenture dated as of July 1, 1969 (the "1969 Indenture"), between the Applicant and Chemical Bank. Manufacturers Hanover suceeded Chemical Bank as trustee on December 2, 1975. The 7.60% Debentures were registered under the Securities Act of 1933 (the "1933 Act").

2. The Delaware County Industrial Development Authority, a public instrumentality of the Commonwealth of Pennsylvania (the "Development Authority"), has issued and outstanding (a) $34,800,000 in aggregate principal amount of its Environmental Improvement Renenue Bonds, Series A (BP Oil Project) (the "Series A Bonds"), under an indenture dated as of April 1, 1973, and (b) $10,000,000 in aggregate principal amount of its Environmental Improvement Revenue Bonds, Series B (Sohio Petroleum Company Project) (the "Series B Bonds"), under a supplemental indenture dated as of December 15, 1976 (the 1973 indenture and 1976 supplemental indenture being hereinafter referred to as the "Development Authority Indenture"). The Development Authority Indenture is between the Development Authority and Manufacturers Hanover. In Guaranty Agreements dated April 1, 1973 and December 15, 1976, respectively (the "Guaranty Agreements"), between the Applicant and Manufacturers Hanover, the Applicant unconditionally guaranteed the full and prompt payment of the principal of, any premium on, and the interest on the Series A and Series B Bonds when due. Neither the Series A nor the Series B Bonds were registered under the 1933 Act, but the Commission issued an exemption order under Section 310(b)(1)(ii) of the Act with respect to Manufacturers Hanover's trusteeship thereof.

3. The Ohio Air Quality Development Authority, a public instrumentality of the State of Ohio ("The Ohio Air Authority"), has issued and outstanding:

(a) $12,500,000 in aggregate principal amount of its Pollution Control Revenue Bonds, Series A (Sohio Air Project) (the "1977 Air Project Bonds"), under an indenture dated as of September 1, 1977 (the "1977 Air Project Indenture"), between the Ohio Air Authority and Manufacturers Hanover. Pursuant to a Loan Agreement with the Ohio Air Authority, the Applicant agreed to pay an amount sufficient to pay principal and interest on the 1977 Air Project Bonds. These bonds were not registered under the 1933 Act, but the Commission issued an exemption order under Section 310(b)(1)(ii) with respect to Manufacturers Hanover's trusteeship thereof; and

(b) $4,000,000 in aggregate principal amount of its Pollution Control Revenue Bonds, Series B (Sohio Air Project) (the "1978 Air Project Bonds"), under an indenture dated as of February 1, 1978 (the "1978 Air Project Indenture"), between the Ohio Air Authority and Manufacturers Hanover. Pursuant to a Loan Agreement with the Ohio Air Authority, the Applicant agreed to pay an amount sufficient to pay principal and interest on the 1978 Air Project Bonds. These bonds were not registered under the 1933 Act.

4. The Ohio Water Development Authority, a public instrumentality of the State of Ohio (the "Ohio Water Authority"), has issued an outstanding $2,200,000 in aggregate principal amount of its Pollution Control Revenue Bonds, Series A (Sohio Water Project) (the "1978 Water Project Bonds"), under an indenture dated as of February 1, 1978

(the "1978 Water Project Indenture"), between the Ohio Water Authority and Manufacturers Hanover. Pursuant to a Loan Agreement with the Ohio Water Authority, the Applicant agreed to pay an amount sufficient to pay principal and interest on the 1978 Water Project Bonds. These Bonds were not registered under the 1933 Act.

5. The 1978 Water Project Bonds, the 1978 Air Project Bonds, the 1977 Air Project Bonds, the Series A and Series B Bonds under the Development Authority Indenture, and the 7.60% Debentures under the 1969 Indenture are all wholly unsecured and of equal rank. In addition, with respect to each of the indentures, the Applicant has agreed, pursuant to a guaranty or loan agreement or otherwise, to pay an amount sufficient to pay principal and interest on the Bonds and Debentures. There are no material differences among the various indentures except for variations as to aggregate principal amounts, dates of issue, maturity and interest payment dates, interest rates, and the issuer of the Bonds and Debentures.

6. In the opinion of the Applicant, the provisions of the aforementioned indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of any holder of the Bonds and Debentures issued under such indentures to disqualify Manufacturers Hanover from acting as trustee under any of the indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission at the Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than February 19, 1982, submit to the Commission his views or any substantial facts bearing on this application or request that a hearing be held on such matter. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission. Persons who request a hearing or advice as to whether the hearing is ordered will receive all notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-2287 Filed 1-28-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12183; 812-5034]

United Services Group of Funds, Inc.; Filing of Application

January 25, 1982.

Notice is hereby given that United Services Group of Funds, Inc. ("Applicant") 15748 Interstate Highway 10W, San Antonio, Texas 78249, an open-end, diversified, management company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 3, 1981, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit one of its three series, the U.S. Treasury Fund ("Fund"), to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a recently organized Maryland corporation which was formed for the purpose of succeeding to the business of Good and Bad Times Fund ("GBTF"), an open-end, diversified, management investment company registered under the Act. According to the application, GBTF will be merged into the Applicant following approval by the shareholders of GBTF. Applicant states that it is structured as a "series company" and will initially have two series of shares. Applicant states that one series will be called the Good and Bad Times Fund and that the second series will be the Fund. According to the application GBTF's investment adviser, Growth Research and Management, Inc., will continue as investment adviser to the Applicant.

According to the application, the investment objective of the Fund is to achieve a high level of current income while maintaining the highest degree of safety and liquidity of capital by investing in a portfolio of short-term United States Treasury instruments and repurchase agreements relating to such United States securities. Applicant states that the Fund will invest exclusively in short-term debt obligations of the United States Treasury and repurchase agreements with respect thereto provided that the dealer with whom the repurchase agreement is entered into (other than a bank) is one with which the Federal Reserve System conducts open market operations.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors.

Rule 22c–1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a–4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio

instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant requests an exemption from the provisions of Section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit the Fund to value its portfolio securities using the amortized cost method of valuation. In support of its request, Applicant represents that its board of directors has determined that, absent unusual circumstances, amortized cost represents fair value of the Fund's portfolio securities and that the amortized cost method of valuation is appropriate and in the Applicant's best interest. Applicant states that it will be advantageous to the shareholders of the Fund to have the conveniences and advantages of the stable purchase and redemption price which the amortized cost method of valuation would provide.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions or provisions of the Act or of any rule or regulation 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.

Applicant asserts that its application meets the standards of Section 6(c) of the Act in light of its management policies, and consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising the Fund's operations and delegating special responsibilities involving portfolio management to the Fund's investment adviser, the board of directors of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Fund's investment objectives, to stabilize the Fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors of the Applicant shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share of the Fund as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share of the Fund exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated by it.

(c) Where the board of directors believes the extent of any deviation from the $1.00 amortized cost price per share of the Fund may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. The Fund will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Fund will not (a) purchase any instrument with a remaining maturity of greater than one year or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Fund will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each of its quarterly reports, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than February 16, 1982, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Fund will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-2288 Filed 1-28-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12182; (812-4992)]

Allison-Williams AccessFund, Inc. (Formerly Allison-Williams Flexi-Fund II, Inc.); Filing of an Application Pursuant to Section 6(c) of the Act for an Order of Exemption From the Provisions of Rules 2a-4 and 22c-1 Under the Act

January 25, 1982.

Notice is hereby given that Allison-Williams AccessFund, Inc. ("Applicant"), 1560 Northwestern Bank Building, Minneapolis, Minnesota 55402, registered under the Investment Company Act of 1940 (the "Act") as a diversified, open-end management investment company, filed an application on October 15, 1981, and an amendment thereto on January 4, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for the purposes of effecting sales, redemptions, and repurchases of its shares, to the nearest one cent on a share value of one dollar. In all other respects, portfolio securities held by Applicant will be valued in accordance with the views set forth in Investment Company Act Release No. 9736 (May 31, 1977) ("Release No. 9786"). All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund, the investment objective of which is to achieve maximum current income to the extent consistent with stability of principal through investment in "money market" instruments maturing in 12 months or less. According to the application, Applicant proposes to invest in United States Government and agency obligations, certain bank obligations of Canadian chartered banks or United States banks and foreign branches of United States banks, commercial paper, certain corporate obligations, repurchase agreements, and certain other obligations accompanied by a guarantee of principal and interest of a bank or corporation whose certificates of deposit or commercial paper may be otherwise purchased by Applicant.

Applicant further states that its net asset value per share is ordinarily expected to be $1.00 per share (rounded to the nearest cent); however, the net asset value is subject to fluctuation based on changes in the value of portfolio securities. Applicant further represents that to maximize the likelihood of maintaining the stability of its net asset value at $1.00 per share, its board of directors may reduce or suspend the payment of dividends if the net asset value per share should decline below $.997 and may supplement such dividends with other distributions if the net asset value per share should rise above $1.003.

Rule 22c-1 under the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption and repurchase shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets fair value as determined in good faith by the board of directors of the registered company. In Investment Company Act Release No. 9786, the Commission issued an interpretation of Rule 2a-4 expressing its view that it was inconsistent with Rule 2a-4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4. Applicant submits that without an exemption from the provisions of Rule 2a-4 and 22c-1 under the Act, it would be prohibited from determining its net asset value in the manner set forth above.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and any rule or regulation 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.

In support of the relief requested, Applicant states its belief that potential investors are vitally concerned that the net asset value of their shares remain stable, and that such investors are not concerned with the theoretical differences which might occur between the yield achieved through "market" pricing and the yield computed by using the "penny rounding" valuation method decribed herein. In addition, Applicant states that granting of the relief requested would provide its shareholders the convenience of being able to determine the value of their shares of Applicant simply by knowing the number of shares they own, and would make the task of maintaining an investment record easier.

Applicant's management further believes that computing Applicant's net asset value per share to the nearest one cent on a share value of $1.00 will allow it to maintain a constant net asset value per share under usual or ordinary circumstances and thereby permit it to serve the interest and requirements of its shareholders. Applicant's board of directors has further determined in good faith that this method of calculating Applicant's net asset value per share, under such circumstances, is appropriate and in the best interest of Applicant's shareholders.

Applicant further states that its request for exemption is made based upon its existing management policies and has agreed that the following conditions may be imposed in any order granting the exemptions it has requested:

1. That the board of directors of Applicant in supervising Applicant's operations and delegating special responsbilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, in taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares as computed for purposes of distribution, redemption, and repurchase, rounded to the nearest one cent will not deviate from $1.00;

2. That Applicant will maintain a dollar-weighted average portfolio maturity apporpriate to its objective of maintaining a stable price per share, and that Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. That Applicant's purchases of portfolio instruments, including repurchase agreements, will be limited to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board.

Applicant's board of directors intend to carry out the undertaking in condition 1 above by (i) requiring its investment adviser (Allison-Williams Advisers, Inc.) to adopt policies calcuated to prevent such price, as so rounded, from deviating from $1.00 except under unusual or extraordinary circumstances, and (ii) periodically reviewing the investment adviser's management of Applicant pursuant to such policies at regularly scheduled meetings of the board of directors.

For the reasons stated in its application, Applicant submits that the exemptions from the provisions of Rule 2a–4 and 22c–1 under the Act which it has requested are 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.

Notice is further given that any interested person may, not later than February 16, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided in Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing on request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–2283 Filed 1–28–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[CM–8/482]

Advisory Committee On International Investment, Technology, and Development; Working Group On Transfer of Technology; Meeting

The Department of State will hold a meeting on February 18, 1982, of the Working Group on Transfer of Technology of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 10:00 a.m. to 12:00 noon. The meeting will be held in Room 1207 of the State Department, 2201 C Street, N.W., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to discuss the proposed UNCTAD Code of Conduct on the Transfer of Technology (TOT). On December 16, 1981, the U.N. General Assembly passed Resolution 36/140 which established an Interim Committee (I.C.) which will meet for four weeks during 1982 to seek solutions to the outstanding issues related to the possible reconvening of the U.N. Conference on the Transfer of Technology Code. The U.S. Delegation to the Interim Committee meetings on the TOT Code would like the opportunity to review Code issues again with the Advisory Committee on International Investment, Technology, and Development and other interested parties prior to the first Interim Committee session.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632–2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: January 18, 1982.

John T. McCarthy,

Acting Executive Secretary.

[FR Doc. 82–2402 Filed 1–28–82; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/486]

Oceans and International Environmental and Scientific Affairs Advisory Committee, Antarctic Section; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 2:00 PM, Thursday, March 18, 1982 in Room 1408, Department of State, Washington, D.C.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the March 18 meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees to Room 1408.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Friday, March 19, 1982 at the National Academy of Sciences, 2101 Constitution Avenue, N.W., in sessions which will not be open to the public. As these sessions will include discussions of classified material, they have been closed pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and 5 U.S.C. 552b (c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future negotiations. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources.

This portion of the meeting will include classified briefings and examination and discussion of classified documents pursuant to Execurive Order 12065.

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OPA, Room 5801, Department of State. He may be reached by telephone on (202) 632–3262.

James L. Malone,

Chairman.

January 18, 1982.

[FR Doc. 82–2401 Filed 1–28–82; 8:45 am]

BILLING CODE 4710–01–M

[CM–8/481]

Advisory Committee on The Law of The Sea; Partially Closed Meeting

In accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended by Pub. L. 94–409 Section 5(c), notice is hereby given that the Advisory Committee on the Law of the Sea will meet in open and closed sessions on Thursday, February 18. The open session of the meeting will convene February 18 at 3:30 p.m. in the Loy Henderson Room, U.S. Department of State, 21st and C Streets, N.W., Washington, D.C.

The purpose of the closed meeting is to consider the Draft Law of the Sea Convention, the U.S. review process and its outcome and the U.S approach to the Law of the Sea issues. During the closed sessions, documents classified under the provisions of Executive Order 12065 will be discussed.

These documents relate to the issues which the United States has reviewed and has negotiated or may negotiate at the Third U.N. Conference on Law of the Sea. Accordingly it has been determined that it is in the public interest to close these meetings pursuant to 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9).

The issues cover such subjects as the review, freedom of navigation on the high seas and in straits used for international navigation, the deep seabed mining regime, the continental margin, the economic zone, fisheries, marine pollution, scientific research, dispute settlement, and other topics involving U.S. national security and foreign relations matters. Premature disclosure of the contents of these documents could adversely affect our foreign relations interests and jeopardize United States law of the sea interests.

The open session of the Advisory Committee meeting will discuss all principal Law of the Sea issues, including those issues stated above, but will not examine the classified items discussed during the closed session.

The Advisory Committee on the Law of the Sea represents a broad cross-section of industries, professions, academic disciplines, and other public groups. As such, it will comprehensively review the proposals which have come and will come before the Conference.

At the open session, beginning at 3:30 p.m., February 18, the general public attending may participate in the discussion subject to instructions of the Chairman.

As entrance to the State Department is controlled, members of the public who wish to attend the open session should contact Marsha Bellavance and provide their name and affiliation to facilitate their attendance. Her telephone number is (202) 632–0041.

Otho E. Eskin,

Director, Office of Ocean Law and Policy.

January 22, 1982

[FR Doc. 82–2403 Filed 1–28–82; 8:45 am]

BILLING CODE 4710–10–M

[CM–8/485]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on the Carriage of Dangerous Goods of SOLAS will conduct an open meeting at 9:30 a.m. on February 17, 1982, in Room 6319 of the Coast Guard Headquarters Building, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting will be to discuss the following:

—the report of the XXXIII Session of the IMCO Subcommittee on the Carriage of Dangerous Goods;

—the report of the first intersessional meeting of the Editorial and Technical Group of the IMCO Subcommittee on the Carriage of Dangerous Goods;

—Amendments 20 and 21 of the IMDG Code;

—IMCO activities of a continuing nature.

Members of the public may attend up to the seating capacity of the room.

For further information contact Lt. Kevin J. Eldridge, USCG (G–MHM–2), 2100 2nd St., S.W., Washington, D.C. 20593. Telephone (202) 426–1577.

Dated: January 25, 1982.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 82–2404 Filed 1–28–82; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/480]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 1:30 p.m. on February 18, 1982, in Room A110, Federal Communications Commission Annex, 1229 20th Street, N.W., Washington, D.C.

The purpose of the meeting is to prepare position documents for the Twenty Fourth Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMCO) to be held in London on March 15, 1982. In particular, the working group will discuss the following topics:

—Maritime distress system

—Performance standards for shipboard radio equipment

—Life-saving radio equipment

—Digital selective calling

—Matters related to ITU WARC for Mobile Telecommunications

—Matters related to CCIR Study Group 8

Members of the public may attend up to the seating capicity of the room.

For further information contact Mr. R. L. Swanson, U.S. Coast Guard (G–TTM–S/32), Washington, D.C. 20593. Telephone (202) 426–0517.

Dated: January 21, 1982.

John Todd Steward,

Chairman, Shipping Coordinating Committee.

[FR Doc. 82–2405 Filed 1–28–82; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/483]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Meeting

The US SOLAS Working Group on Subdivision, Stability and Load Lines and US SOLAS Working Group on Safety of Fishing Vessels will conduct an open meeting at 10:00 a.m on March 2, 1982, in Room 1303 of Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593.

The purpose of the meeting will be a review of the agenda items in preparation for the next Session of the Subcommittee.

The agenda for the meeting will consist of a general review of all items scheduled for both Subcommittees with particular attention to any session papers from other countries received by that time.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. William A. Cleary, Jr., USCG (G–MMT–5/TP13), 2100 2nd St., S.W., Washington, D.C. 20593. Telephone (202) 426–2188.

Dated: January 25, 1982.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 82–2406 Filed 1–28–82; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/484]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Notice of Meeting

The SOLAS Subcommittee of the Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Monday, March 22, 1982, in Room 3201 of the USCG Headquarters Building, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting is to finalize preparations for the 46th Session of the Maritime Safety Committee (MSC) of the Intergovernmental Maritime Consultative Organization (IMCO) which is scheduled for March 29–April 2, 1982 in London. In particular, the SHC will discuss the development of US positions dealing with, inter alia, the following topics.

—Reports of the various subcommittees;
—Review of the work programme;
—Consideration of the second set of amendments to 1974 SOLAS.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. G. P. Yoest, USCG Headquarters (G–CPI), 2100 Second St., S.W., Washington, D.C. 20539. Telephone (202) 426–2280.

Dated: January 25, 1982.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 82–2407 Filed 1–28–82; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[FAC No. 95111]

Restricted Merchandise; Publications Originating in Vietnam, North Korea, Cambodia or Cuba

January 25, 1982.

I. Purpose

This notice is to advise Customs officers of the procedures to be followed in the detention and disposition of publications of Vietnamese, North Korean, Cambodian, or Cuban origin which are imported without a license issued by the Office of Foreign Assets Control, Treasury Department (FAC).

II. Information

The Foreign Assets Control Regulations (31 CFR Part 500) prohibit the importation without Treasury license of books, periodicals, or other publications of Vietnamese, North Korean, or Cambodian origin, including those which are mailed or otherwise shipped from third countries. A similar prohibition applies with respect to publications from Cuba under the Cuban Assets Control Regulations (31 CFR Part 515). The countries referred to in this paragraph ("designated countries") are the only ones to which restrictions administered by this Office apply with respect to importation of publications.

III. Action

A. Single Copy Imports

U.S. Customs Service is authorized to release to the addressee, whether an individual, an institution or other organization, single copies of any Cuban, Vietnamese, North Korean or Cambodian publications. For purposes of this notice, the term "publications" includes books, newspapers, magazines, films, phonograph records, tapes, photographs, microfilm, microfiche, posters and similar materials.

B. Commercial Imports

The firms listed on the attachment have been issued Treasury licenses authorizing the importation of publications from one or more of the designated countries. Such licensed imports addressed to the named licensed importer should not be detained.

C. Imports By Newsgathering Agencies, Universities, Libraries, Scientific Institutions

Treasury has issued licenses to major media networks, universities, libraries, scientific and research organizations to import publications from the embargoed countries. Any such importation of more than single copies shall be detained until it is established that the importation has been licensed by the Office of Foreign Assets Control. If such shipment is not accompanied by a copy of the license or if the importer has not presented a license to the Customs Service, the shipment should be detained and the Chief of Licensing of this Office notified (376–0408).

D. Scholars, Newsmen, Film Makers and Researchers Who Visit Designated Countries

Persons who travel to Cuba, North Korea, Vietnam, or Cambodia for the purpose of gathering news, making news or documentary films, engaging in professional research or for similar activities are authorized by general licenses contained in §§ 515.560(b) of the Cuban Assets Control Regulations and 500.563(b) of the Foreign Assets Control Regulations to acquire and import as accompanied baggage *or* otherwise and without limit as to value, publications and similar materials directly related to these professional activities. Customs Service should not detain such importations. These goods may not be imported for resale.

E. Tourists

Tourists who visit designated countries are authorized by the general licenses contained in § 515.560 (a)(3) of the Cuban Assets Control Regulations and § 500.563(a)(3) of the Foreign Assets Control Regulations to import as accompanied baggage *only* up to $100 in foreign market value of any merchandise which originated in the country. This $100 authorization can be used in whole or in part for publications and similar items, for personal use only.

IV. Unlicensed Importations of Publications

In the case of publications which are imported without a license, Customs should use normal notice of detention procedures and advise this Office through the Chief of Licensing of the detention of of unlicensed publications from designated countries. Importers of unlicensed publications should be advised that information can be obtained from, and license applications filed with: Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, N.W., Washington, D.C. 20220.

V. Publications Presently Under Detention

Publications from designated countries presently under detention as of the date of these instructions due to the absence of an FAC license but which fall within the terms of paragraph III, A above should be released to the importer as soon as practicable.

Dated: January 25, 1982.

Raymond W. Konan,

Chief Counsel, Acting Director.

Attachment

Addressees of prohibited publications who are licensed by FAC:

Licenses

Cuba

Center for Cuban Studies, 186 West 4th Street, New York, New York.

Tri Continental Imports, Inc., P.O. Box 254, Murray Hill, Station, New York, New York 10016.

Circulo de Cultura Cubana, 36 West 44th Street, Suite 311, New York, New York 10001.

Viet-Nam, Cambodia, North Korea

None at present.

[FR Doc. 82-2349 Filed 1-26-82; 3:08 pm]

BILLING CODE 4810-25-M

Issuance by Government of Italy of Certificate Verifying Non-Cuban Origin of Nickel-Bearing Materials; Importation From Italy of Nickel-Bearing Materials From Italian Companies

Certificates of origin are now available for importation from Italy of nickel-bearing materials and articles produced by Italian firms. These certificates are issued pursuant to a formal certification agreement between the Government of Italy and the Government of the United States. They will certify that the materials with respect to which the certificates are issued do not contain any nickel or nickel-oxide of Cuban origin. Each certificate will bear the following statement in the body of the document: "The Government of Italy hereby certifies that the products described herein do not contain nickel or nickel-oxide of Cuban origin. This certificate has been granted in accordance with the procedures agreed upon by the Government of Italy and the Government of the United States on January 6, 1982."

Nickel-bearing materials may now be imported from Italy under the general license in § 515.536 of the Regulations in accordance with the special certification provisions in that section and § 515.808 of the Regulations. United States Customs entry will be permitted with respect to any such merchandise if either (1) a certificate of origin issued by the Government of Italy (Ministero dell' Industria), or (2) a certification regarding interim shipments issued by the Government of Italy under paragraph F of the foregoing certification agreement, covering the particular merchandise to be imported, is presented to U.S. Customs authorities at the point of entry.

Dated: January 25, 1982.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

[FR Doc. 82-2341 Filed 1-28-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 20
Friday, January 29, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Equal Employment Opportunity Commission	1
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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

DATE AND TIME: 2:30 a.m. (Eastern Time), Tuesday, February 2, 1982.

PLACE: Commission Conference Room, No. 5240 on the fifth floor of the Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Freedom of Information Act Appeal No. 81-11-FOIA-34-SL, concerning a request for witness' statement and investigatory material contained in a charge file under the Age Discriminatory in Employment Act of 1967, as amended.
2. Freedom of Information Act Appeal No. 81-12-FOIA-070-MK, concerning a request for two items from a closed age discrimination charge file.
3. Freedom of Information Act Appeal No. 81-12-FOIA-57-NO, concerning a request for access to records in a charge file.
4. Fredom of Information Act Appeal No. 81-11-FOIA-061-MK, concerning a request for materials contained in an investigative file.
5. Amendments to EEOC's Coordination Regulations Under Executive Order 12067.
6. A Report on Commission Operations by the Executive Director.

Closed

1. Proposed Withdrawal of a Commissioner's Charge (No. THO6-707003).
2. Litigation Authorization; General Counsel Recommendations.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice issued January 26, 1982.

[S-131-82 Filed 1-27-82; 11:07 am]

BILLING CODE 6370-06-M

2

FEDERAL COMMUNICATIONS COMMISSION.

Deletion of agenda item from January 28th open meeting.

The following item has been deleted from the list of agenda items scheduled for consideration at the January 28, 1982 Open Meeting and previously listed in the Commission's Notice of January 21, 1982.

Agenda	Item No.	Subject
General	3	Title: Report of the United States Delegation to the Regional Administrative MF Broadcasting Conference (Region 2), Second Session, Rio de Janeiro, 1981. Summary: The United States participated in a conference in Rio de Janeiro which developed an agreement and master assignment plan governing AM broadcasting in the Western Hemisphere. The Chairman of the U.S. Delegation will report on the outcome of the Conference and its potential effect on the AM broadcasting service in the U.S.

Issued: January 26, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-134-82 Filed 1-27-82; 3:32 pm]

BILLING CODE 6712-01-M

3

FEDERAL RESERVE SYSTEM. (Board of Governors.)

TIME AND DATE: 2:00 p.m., Thursday, February 4, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 26, 1982.

James McAfee,

Assistant Secretary of the Board.

[S-129-82 Filed 1-26-82; 4:13 pm]

BILLLING CODE 6210-01-M

4

PAROLE COMMISSION.

TIME AND DATE:

Monday, February 8, 1982—9:00 a.m. to 5:30 p.m.

Tuesday, February 9, 1982—9:00 a.m. to 5:30 p.m.

Wednesday, February 10, 1982—9:00 a.m. to 12:00 Noon.

PLACE: Room 420-F; One North Park Building; 5550 Friendship Boulevard; Bethesda, Maryland 20015.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 24 cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. § 2.17 and appealed pursuant to 28 C.F.R. § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5987.

[S-132-82 Filed 1-27-82; 2:39 pm]

BILLING CODE 4410-01-M

5

PAROLE COMMISSION.

TIME AND DATE: Wednesday, February 10, 1982—1:30 p.m. 4:30 p.m.

PLACE: Room 420-F; One North Park Building; 5550 Friendship Boulevard; Bethesda, Maryland 20015.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Application of John A. Cambell for a Certificate of Exemption—29 U.S.C. § 504.
2. Updated Report for fiscal year 1982 budget.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Billie L. Richards, Chairman's Office, (301) 492–5590.

[S–133–82 Filed 1–27–82; 2:39 pm]

BILLING CODE 4410–01–M

6

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 1, 1982, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, February 2, 1982, at 10:00 a.m. and on Thursday, February 4, 1982, following the 3:30 p.m. open meeting. An open meeting will be held on Thursday, February 4, 1982, at 3:30 p.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(A)(4)(8)(9)(i) and (10).

Chairman Shad and Commissoners Loomis, Evans, Thomas, and Longstreth voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 2, 1982, at 10:00 a.m., will be:

Formal orders of investigation.

Access to investigative files by Federal, State, or Self-Regulatory authorities.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Litigation matter.

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Regulatory matter bearing enforcement implications.

The subject matter of the closed meeting scheduled for Thursday, February 4, 1982, following the 3:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, February 4, 1982, at 3:30 p.m., will be:

Oral argument on an appeal by George R. Zenanko from the initial decision of an administrative law judge. For further information, please contact R. Moshe Simon at (202) 523–4588.

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: Jerry Marlatt at (202) 272–2092.

January 26, 1982.

[S–130–82 Filed 1–27–82; 10:48 am]

BILLING CODE 8010–01–M

7

TENNESSEE VALLEY AUTHORITY (Meeting No. 1282).

TIME AND DATE: 10:15 a.m. (EST), Wednesday, February 3, 1982.

PLACE: Knoxville Civic Coliseum Ballroom, 500 Church Avenue, S.E., Knoxville, Tennessee.

STATUS: Open.

DISCUSSION ITEM: 1. Review of TVA load growth/plant construction situation.

ACTION ITEMS:

Old Business

1. Supplement to personal services contract with Pickard, Lowe and Garrick, Inc., Irvine, California, for assistance to TVA in the performance of a probabilistic risk assessment of the Browns Ferry Nuclear Plant, unit 1.

New Business

A—Project Authorizations

1. Project Authorization No. 3598—Construction of a 500-kV interconnection to Appalachian Power Company's Stanley Valley Substation.

2. Project Authorization No. 3600—Replace and modify boiler bypass system for Cumberland Steam Plant units 1 and 2.

B—Purchase Award

1. Negotiation No. 35–196715—Indefinite quantity term contract for Diamond Power soot blower repair parts for any TVA Fossil Plant.

2. Invitation No. C3–586108 (Partial reissue)—Indefinite quantity term contract for No. 2 diesel fuel oil for any TVA project or warehouse.

C—Power Items

1. Letter agreement with Cities Service Company providing for a one-month extension of power supply for operation of its Copperhill, Tennessee, plant.

2. Renewal power contract with Marshall-DeKalb Electric Cooperative.

3. Deed and bill of sale to East Mississippi Electric Power Association covering conveyance of section of TVA's Philadelphia-DeKalb 46-Kv Line.

4. Lease and amendatory agreement with Volunteer Electric Cooperative, covering arrangements for lease of eight TVA 69-kV substations to permit higher voltage service.

E—Real Property Transactions

[1] 1. Seventy-year easements on portions of Chattanooga office complex property to Chattanooga Computer Center Associates, Ltd.

F—Unclassified

[1] 1. Memorandum of understanding between TVA and Bonneville Power Administration relating to cooperation and exchanges of information.

2. Revised TVA policy code relating to management and development of mineral resources.

3. Adoption of new TVA policy code relating to hardwood and other biomass fuels, which replaces existing code on alcohol fuels.

4. Changes in list of designated certifying officers authorized to approve payments made by TVA.

5. Establishment of a payroll allotment system which will permit employees to make payroll allotments to Individual Retirement Accounts (IRA's) offered by financial institutions.

6. Authority to write off uncollectible accounts receivable.

7. Revised budget plan for fiscal year 1982.

DATE: January 27, 1982.

CONTACT PERSON FOR MORE INFORMATION:

Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to request for information about this meeting. Call (615) 632–3247, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

[S–135–82 Filed 1–27–82; 3:39 pm]

BILLING CODE 8120–01–M

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[1] Items approved by individual Board members. This would give formal ratification to Board's action.

federal register

Friday
January 29, 1982

Part II

Department of Health and Human Services

Food and Drug Administration

Radiology Devices; Development of General Provisions and Classification of 73 Devices; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 78N-2742]

Radiology Devices; Development of General Provisions and Classification of 73 Devices

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing general rules applicable to the classification of all radiology devices. The Medical Device Amendments of 1976 require the agency to classify all medical devices intended for human use into three categories: Class I, general controls; class II, performance standards; and class III, premarket approval. In the preamble to this proposal, FDA describes the development of the proposed regulation classifying 73 radiology devices. The preamble also describes the activities of the Radiology Device Section of the Obstetrics-Gynecology and Radiologic Devices Panel (formerly the Radiological Device Classification Panel), an FDA advisory committee that makes recommendations to FDA concerning the classification of radiology devices.

DATES: Comments by March 30, 1982. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION:

Device Classification System

The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360c) establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories are as follows: class I, general controls; class II, performance standards; and class III, premarket approval.

Most devices are not classified under section 513 of the act until after FDA has (1) received a recommendation from a device panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. These steps must precede the classification of any device that was in commercial distribution before May 28, 1976 (the date of enactment of the amendments) and that was not previously regarded by FDA as a new drug under section 505 of the act (21 U.S.C. 355). A device that is first offered for commercial distribution after May 28, 1976, and that is substantially equivalent to a device classified under this scheme, is classified in the same class as the device to which it is substantially equivalent.

A device that FDA previously regarded as a new drug, or a newly offered device that is not substantially equivalent to a device that was in commercial distribution before the amendments, is classified by statute into class III. These two types of devices are classified into class III without any FDA rulemaking proceedings. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 of the regulations (21 CFR Part 807).

Related Regulations

In the **Federal Register** of July 28, 1978 (43 FR 32988), FDA issued final regulations describing the procedures for classifying devices intended for human use. These regulations, which were proposed in the **Federal Register** of September 13, 1977 (42 FR 46028), supplement the agency's regulations in Part 14 (21 CFR Part 14) governing the use of advisory committees. The agency also issued interim device classification procedures in a notice published in the **Federal Register** of May 19, 1975 (40 FR 21848).

Activities of Panel

Anticipating enactment of the amendments, FDA established several advisory committees to make preliminary recommendations on device classification. The Radiological Device Classification Panel (the Panel) was originally chartered on October 15, 1974, as the Panel on Review of Radiological Devices. FDA placed a report of the Panel's tentative classification recommendations on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, and announced the availability of the report to the public by notice published in the **Federal Register** of June 25, 1976 (41 FR 26245). On August 9, 1976, the Panel and other preamendments device classification panels were rechartered to reflect their new responsibilities under the amendments. The agency directed each panel to reconsider its preamendments classification recommendations in light of the new requirements. In 1976 and 1977, the Panel reviewed all devices that FDA had referred to it to make certain that its recommendations were in accord with the amendments.

Throughout the Panel's deliberations, interested persons were given an opportunity to present their views, data, and other information concerning the classification of radiological devices. The Panel also invited experts to testify and sought information on many devices from the published literature.

In October, 1977, the Panel submitted to FDA a preliminary report of its recommendations. The report included a roster of current and former Panel members and consultants and listed all meeting dates. The agency placed a copy of the report in the Dockets Management Branch (HFA-305), Food and Drug Administration, and announced its availability to the public by notice published in the **Federal Register** of November 29, 1977 (42 FR 60792). At a meeting held on July 10, 1978, the Panel changed its previous recommendations concerning the classification of several devices. An addendum to the Panel report showing these changes has been placed in the Dockets Management Branch, Food and Drug Administration. Also available in this office are summary minutes from all Panel meetings, verbatim transcripts of meetings held after May 28, 1976 (the date of enactment of the amendments), and all references cited in this proposal.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). The Radiological Device Classification Panel was terminated, and its functions are now conducted by the Radiology Device Section of the Obstetrics-Gynecology and Radiologic Devices Panel.

Relationship Between the Device Names in the Device Registration and Listing Codes and the Device Names in Classification Regulations

Some manufacturers have become accustomed to identifying a device by its registration and listing name and three-letter code used for purposes of device listing under section 510 of the act (21 U.S.C. 360). However, FDA is still making changes in the names and identifications for generic types of devices in the classification regulations for all devices for which final regulations have not been published. Because FDA has not used the present device registration and listing names in the proposed and final classification regulations, FDA has prepared an index of names of generic types of medical devices used in classification regulations to aid a manufacturer in matching its device with the proper classification regulation. The index shows the device registration and listing product code for each device reviewed by a classification panel and the corresponding name of the generic type of device and classification panel in which the device classification will be published in the **Federal Register**. The agency announced the availability of this index in the **Federal Register** of March 6, 1979 (44 FR 12269). If necessary, this index will be updated and the availability of the revised index will be reannounced in the **Federal Register**. In the future, following publication of most of the device classification regulations, the agency will revise and reissue the device registration and listing product code, so the device names to be used for registration and listing correspond to the device names in the final device classification regulations.

To help manufacturers relate the classification regulation names to the list of device names previously published by FDA in 1977 "(Classification Names for Medical Devices," U.S. Government Printing Office: 1977–248–282), the chart below indicates any changes, including combinations, from the classification names of devices on the 1977 list.

Docket No.	Classification name	Previous device name(s)
78N-2743	Scintillation (gamma) camera	Gamma camera.
78N-2745	Nuclear whole body counter	Whole body counter.
78N-2749	Radionuclide generator	Isotope generator system.
78N-2750	Nuclear rectilinear scanner	Rectilinear scanner.
78N-2752	Nuclear uptake probe	Nuclear uptake probe, Isotope probe and counter for phosphorus 32.
78N-2756	Nuclear anthropomorphic phantom	Nuclear phantom.
78N-2758	Radionuclide rebreathing system	Isotope rebreathing system (xenon, oxygen, iodine).
78N-2761	Radionuclide test pattern phantom	Radionuclide test pattern with isotope.
78N-2762	Telethermographic system	Thermographic imaging system.
78N-2765	Nonfetal ultrasonic monitor	Nonfetal monitor ultrasonic consinuous wave doppler system.
78N-2766	Ultrasonic pulsed doppler imaging system	Diagnostic ultrasonic pulsed doppler system.
78N-2767	Ultrasonic pulsed echo imaging system	Diagnostic ultrasonic pulsed echo system.
78N-2769	Angiographic x-ray system	Radiographic single- or bi-plane angiographic system.
78N-2770	Diagnostic x-ray beam-limiting device	Radiographic aperture, Radiographic cone, Radiographic automatic collimator, Radiographic manual collimator.
78N-2771	Cine or spot fluorographic x-ray camera	Cine or spot fluorographic camera.
78N-2772	Electrostatic x-ray imaging system	Xeroradiographic imaging system.
78N-2773	Radiographic film marking x-ray system	Radiographic film marking system.
78N-2774	Image-intensified fluoroscopic x-ray system	Image-intensified fluoroscopic system, Radiographic image amplifier tube.
78N-2775	Non-image-intensified fluoroscopic x-ray system	Fluoroscopic system without image intensification.
78N-2776	Spot-film device	Radiographic spotfilm device.
78N-2778	Diagnostic x-ray high voltage generator	Radiographic single phase generator, Capacitor discharge radiographic generator.
78N-2779	Mammographic x-ray system	Mammographic system.
78N-2780	Mobile x-ray system	Mobile x-ray unit, Explosion-safe mobile x-ray unit.
78N-2781	Photofluorographic x-ray system	Photofluorographic system.
78N-2782	Tomographic x-ray system	Radiographic tomographic system.
78N-2783	Computed tomography x-ray system	Radiographic computerized tomographic scanner.
78N-2784	Diagnostic x-ray tube housing assembly	Diagnostic x-ray generating tube and housing assembly.
78N-2785	Diagnostic x-ray tube mount	Radiographic tube mount.
78N-2788	Pneumonencephalographic chair	Pneumoencephalographic chair, Radiographic pneumoencephalographic chair.
78N-2789	Radiologic patient cradle	Mechanical radiographic cradle, Powered radiographic cradle.
78N-2790	Radiographic film	Radiographic film, Extraoral dental x-ray film, Intraoral dental x-ray film.
78N-2791	Radiographic film cassette	Radiographic film cassette x-ray cassette film.
78N-2792	Radiographic film cassette changer	Radiographic film changer, Radiographic cassette changer.
78N-2793	Radiographic film/cassette changer programmer	Radiographic film changer programmer.
78N-2794	Wall-mounted radiographic cassette holder	Radiographic wall mounted cassette holder.
78N-2795	Radiographic film illuminator	Radiographic film illuminator, Explosion-proof radiographic film illuminator.
78N-2796	Automatic radiographic film processor	Radiological automatic radiographic film processor, Cine film processor, Radiographic film dryer, Dental automatic radiographic film processor, Radiographic temperature controller.
78N-2798	Radiographic head holder	Cephalometer (head holder).
78N-2799	Automatic contrast medium injector	Contrast medium automatic injector.
78N-2800	Radiologic quality assurance instrument	Optical step wedge, Ardran-Crooks measurement cassette, Radiographic focal spot camera, Radiographic test pattern.
78N-2801	Radiographic anthropomorphic phantom	Radiologic anthropomorphic phantom.
78N-2802	Radiographic intensifying screen	Radiographic intensifying screen, X-ray radiographic intensifying screen.
78N-2803	Radiographic ECG/respirator synchronizer	Radiographic (electrocardiograph, respiratory) synchronizer.
78N-2804	Radiologic table	Powered nontilting radiographic table, Tilting radiographic table, Fixed radiographic table.
78N-2806	Medical charged-particle radiation therapy system	Medical linear accelerator, Medical betatron, Medical cyclotron, Medical microton, Medical synchrotron.
78N-2810	Medical neutron radiation therapy system	Medical neutron generator.
78N-2813	Manual radionuclide applicator system	Manual isotope applicator.
78N-2814	Remote controlled radionuclide applicator system	Remote controlled isotope applicator.
78N-2815	Radiation therapy beam-sharing block	Isotope beam shaping block.
78N-2817	Radionuclide brachytherapy source	Platinum, titanium, gold isotope needle, Platinum, titanium, gold isotipe seed, Platinum, titanium, gold isotope source, Isotope iridium wire.
78N-2818	Radionuclide teletherapy source	Teletherapy sealed isotope source.
78N-2819	Radionuclide radiation therapy system	Isotope therapy system, Isotope teletherapy, collimator.
78N-2820	Powered radiation therapy support assembly	Radiation therapy powered couch.
78N-2821	Light beam patient position indicator	Light or laser beam patient position monitor.
78N-2823	X-ray radiation therapy system	X-ray therapy system, Therapeutic x-ray dermatological collimator, Therapeutic x-ray high voltage collimator, Therapeutic x-ray low voltage collimator, Therapeutic x-ray orthovoltage collimator, Therapeutic x-ray dermatological (grenz ray) generator, Therapeutic x-ray high voltage generator, Therapeutic x-ray high voltage generator, Therapeutic x-ray low voltage generator, Therapeutic x-ray orthovoltage generator.
78N-2826	Therapeutic x-ray tube housing assembly	Therapeutic x-ray tube and housing assembly.

Docket No.	Classification name	Previous device name(s)
78N-2827	Personnel protective shield	Protective apron, Movable x-ray control panel barrier, Radiographic protective curtain, Radiographic protective glove, Lead syringe holder, Radiological eye shield, Gonadal shield, Vial shield, Leaded apron, Leaded operator radiation protector screen.

List of Radiology Devices

In 1972, FDA surveyed device manufacturers to identify the devices for which classification regulations would be needed. Following this survey, FDA developed a list of radiology devices. The Panel supplemented the list using its members' knowledge of radiology devices in use. Devices that were solely for experimental or investigational use or that were not generally available were not included. Additional radiology devices, which were not included in this list and which were commercially available before May 28, 1976, will be added to the list as necessary.

FDA is proposing to establish a new Part 892 in Title 21 of the Code of Federal Regulations. Part 892 will consist of sections identifying each radiology device with a brief narrative description and stating the classification of that device. A list of the radiology devices appears elsewhere in this preamble.

Radiology Device Classification Regulations

FDA is proposing to classify 73 radiology devices. FDA is proposing to classify 7 radiology devices into class I (general controls) and 64 radiology devices into class II (performance standards). FDA is proposing to classify one radiology device into class II for some uses and into class III (premarket approval) for other uses, and another radiology device into class I, II, or III, depending upon whether the device is nonpowered or AC-powered and upon the uses of the device. The agency also is publishing the recommendations of the Panel regarding these devices, as required by section 513 (c)(2) and (d)(1) of the act (21 U.S.C. 360c (c)(2) and (d)(1)).

Interaction Between the Bureau of Medical Devices and the Bureau of Radiological Health

In addition to its authority under the amendments, FDA has authority to regulate some medical devices under the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602). Public Law 90-602 authorized FDA to establish and execute a program to control electronic product radiation that includes performance standards for electronic products and their related accessories. Radiation emission performance standards have been, and will continue to be, established for those medical devices that emit electronic product radiation. Performance standards have already been promulgated for diagnostic x-ray systems and their major components (21 CFR 1020.30); radiographic equipment (21 CFR 1020.31); fluoroscopic equipment (21 CFR 1020.32); laser products (whether or not for medical use) (21 CFR 1040.11), and ultrasonic therapy products (21 CFR 1050.10). The agency will continue to use its authority over radiation-emitting electronic medical products under both the amendments and the Radiation Control for Health and Safety Act of 1968, as appropriate.

Published Panel Recommendations

The Panel recommendation concerning a radiology device includes the information described below.

1. *Identification.* Both the panel recommendation and the proposed FDA classification include a brief narrative identification of the generic type of device. The identification statement is necessarily broad because it applies to a category or type of device rather than to a specific device. As explained in proposed § 892.1, any manufacturer of a newly offered device who files a premarket notification submission under section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 (21 CFR Part 807) of the regulations cannot show merely that the device is accurately described by the section title and identification provisions of a classification regulation. Although a newly offered device may be described accurately by the title and identification in a classification regulation, it is nevertheless in class III under section 513(f) of the act if it is not substantially equivalent to a preamendments device (or to a postamendments device that has already been reclassified from class III into class I or class II). It is not practical for FDA to publish an identification of each type of device that is so detailed as to anticipate every product feature that may be relevant in determining whether a new device is substantially equivalent to previous devices classified by the regulation. The agency believes that this problem was recognized in, and addressed by, the premarket notification procedures in section 510(k) of the act. Accordingly, any manufacturer who submits a premarket notification submission should state why the manufacturer believes the device is substantially equivalent to other devices in commercial distribution, as required by § 807.87 (21 CFR 807.87), and whether the device is described in a classification regulation.

Several regulations classify products that have both medical and nonmedical uses. FDA will regulate a multipurpose product as a medical device if it is intended for a medical purpose, i.e., for "use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease," or "to affect the structure or any function of the body." (Section 201(h) of the act (21 U.S.C. 321(h)).) FDA will determine the intended use of a product based upon the expressions of the person legally responsible for its labeling and by the circumstances surrounding its distribution. The most important factors the agency will consider in determining the intended use of a particular product are the labeling, advertising, and other representations accompanying the product. Products that have medical uses only are clearly intended for medical purposes and, therefore, will be regulated as medical devices whether or not medical claims are made for them.

FDA recognizes therapy planning computers and programs as medical devices and includes them as accessories to radiation-emitting therapeutic devices.

2. *Recommended classification.* Each Panel's recommendations describe whether the device is recommended for classification into class I (general controls), class II (performance standards), or class III (premarket approval).

For each device recommended for classification into class I, the Panel considered whether the device should be exempt from any requirements under certain sections of the act: Section 510 (21 U.S.C. 360, registration), section 519 (21 U.S.C. 360i, records and reports), and section 520(f) (21 U.S.C. 360j(f), good manufacturing practice requirements). The Panel recommended that several devices be exempted from section 510, from section 519, and from section 520(f) of the act. The agency's policy concerning these exemption recommendations is discussed below in the section of this proposal concerning "Exemptions for Class I Devices."

A Panel recommendation that a device be classified into class II includes the Panel's recommended

priority ("high," "medium," or "low") for establishing a performance standard for the device. Similarly, each Panel recommendation that a device be classified into class III includes the Panel's recommended priority ("high," "medium," or "low") for application of premarket approval requirements to that device. As explained below in the section of this notice concerning "Priorities for Class II and Class III Devices," FDA is not, however, proposing the establishment of FDA priorities at this time.

3. *Summary of reasons for recommendation.* The summary of reasons for the Panel's recommendation explains why the Panel believes a particular device meets the statutory criteria for classification into class I, II, or III. In most cases, the Panel considered the use of electrical power or emission of ionizing radiation as sufficient reason to recommend classification into class II. In the cases of some devices which neither use electrical power nor emit radiation, the Panel indicated that not all the specific general controls need be imposed because some will not provide greater assurance of the safety and effectiveness of these devices, and that applying all general controls would increase the cost of using these devices.

Except in those instances in which FDA's proposed classification differs from the Panel's recommendation, FDA is adopting the Panel's summary of reasons as the agency's statement of the reasons for issuing the regulations, as required by section 517(f) of the act (21 U.S.C. 360g(f)).

In the "Panel Recommendations and FDA's Proposed Classifications" section, the summary of the Panel's reasons for a recommendation identifies any device that is an implant or a life-supporting or life-sustaining device. The summary of reasons for any implant or life-supporting or life-sustaining device that is not recommended for classification into class III also explains why the Panel determined that classification of the device into class III is not necessary to provide reasonable assurance of its safety and effectiveness. Also, FDA's proposed classifications in the preamble provide a similar explanation for proposing to classify an implant or a life-supporting or life-sustaining device into a class other than class III.

The summary of reasons for a recommendation also includes any Panel recommendations for the labeling of the device. FDA will respond to these recommendations after final classifications have been established for each device.

4. *Summary of data on which the recommendation is based.* In many cases, the Panel based its recommendations on the Panel members' personal knowledge of, and clinical experience with, the devices under review. The Panel particularly relied upon clinical experience and judgment when considering a simple device that had been used extensively and was accepted widely before the amendments were enacted. The Panel concluded that most radiology devices have been in widespread clinical use for a long time. The Panel expressed the view that radiology devices are probably the medical devices most regulated both by the Federal government and by the States. The Panel used, but did not cite, the large body of data developed by various governmental and voluntary standards-setting organizations concerning the biological effects of ionizing radiation. Among such organizations is FDA's Bureau of Radiological Health, which has an extensive list of relevant publications that can be obtained upon request. Other organizations that have many publications in the field include the National Council on Radiation Protection and Measurement, the American National Standards Institute, the International Commission on Radiological Protection, the National Electrical Manufacturers Association, the Association for the Advancement of Medical Instrumentation, and others.

The legislative history of the amendments provides that the term "data" has a special meaning in section 513(c)(2)(A) of the act, which requires that a Panel recommendation summarize the data upon which a recommendation is based. As used in that section, "data" refers not only to the results of scientific experiments, but also to less formal evidence, other scientific information, or judgments of experts (House Committee on Interstate and Foreign Commerce, Medical Device Amendments of 1976, H.R. Rept. 95–853, 94th Congress, 2d Session 40 (1976)). FDA has determined that clinical experience and judgment is valid evidence for classifying certain devices.

In several cases, FDA sought more data and information concerning the classification of a device than were cited by the Panel. References to these data and information are found in the preamble in FDA's proposed classifications for each radiology device. The agency is adopting as its statement of the basis for issuing the regulation under section 517(f) of the act the Panel's summary of the data on which a recommendation to classify a device is based, together with any additional data and information cited in the preamble in the proposed classifications.

5. *Risks to health.* In identifying the risks to health presented by radiology devices, the panel recognized that few devices are completely free of risk. The Panel listed the risks it considered most significant, especially those that are unique to the use of the individual device. In some cases, FDA has identified risks to health presented by a device in addition to those listed by the Panel. These additional risks are set out in the preamble under the heading "Panel Recommendations and FDA's Proposed Classifications" of a particular device.

In addition to those hazards explicitly mentioned, the Panel and FDA recognize that there are general hazards associated with certain types of devices. With any diagnostic device, accurate results in usable form must be obtained in order to avoid misdiagnosis, with the consequent hazard of incorrect patient management that places the patient unnecessarily at risk. When the diagnostic device emits radiation, accurate and useable results also are needed to avoid the additional radiation exposure necessitated by a repeat procedure. Because of the weight and structure of many radiologic devices, there is a potential health risk to the patient and operator as a result of mechanical failure. The agency is concerned that physical injury (trauma) to the patient or operator can result from structural or operating mechanism defects in these devices and, therefore, believes that a safety standard may be necessary.

Because the discussion in the Panel's classification recommendations and FDA's proposed classifications may not identify all risks to health presented by radiology devices, future regulations establishing performance standards under section 514 of the act (21 U.S.C. 360d) or requiring premarket approval under section 515(b) of the act (21 U.S.C. 360e(b)) may identify additional risks to health to be addressed by FDA requirements.

Under the heading "Panel Recommendations and FDA's Proposed Classifications", each section for a radiology device states whether FDA agrees with the Panel's recommendation and describes the agency's proposed classification of the device.

FDA cautions that the final classification of a device may differ from the proposal. Factors that may cause such a change include comments, the agency's reconsideration of existing data and information, and the agency's

consideration of new data and information.

Priorities For Class II and Class III Devices

For a device that the Panel recommends be classified into class II or class III, section 513(c)(2)(A) of the act requires that the Panel recommendation include, to the extent practicable, a recommendation for the assignment of a priority for application to the device of a performance standard or premarket approval requirements. In developing its advice concerning priorities ("high," "medium," or "low") of devices recommended for classification into class II, the Panel compared the device with other radiology devices based on information available to the Panel members concerning the relative importance of use of the device and the relative risks presented by the device. The Panel recommended assignment of a "high priority" only to those class II devices that the Panel believed should receive the agency's immediate attention. The Panel did not recommend that any device be classified into class III.

FDA is not proposing at this time to establish priorities for development of performance standards for all class II devices. Section 513(d)(3) of the act authorizes, but does not require, establishment of these priorities. In the **Federal Register** of February 1, 1980 (45 FR 7489 and 45 FR 7493), FDA published notices identifying which class II devices the agency found to warrant a high priority for the development of performance standards. At a later date, the agency will establish priorities for the development of standards for the remaining class II devices. All priorities established by the agency are based on the classification panels' recommendations, available resources, and other relevant factors. The agency's priorities will be reflected in the agency's annual budget request and other publicly available documents and may be published in the **Federal Register.**

The agency intends to proceed as quickly as the statute and agency and panel resources permit to require premarket approval of devices classified into class III. Two factors affect the length of time before FDA requires submission of premarket approval applications for any particular device that is classified by an FDA regulation into class III: the number of devices reviewed by a panel and the priority of a particular device in relation to other class III devices considered by a panel. For example, where FDA classifies into class III only a few devices within a panel's specialty area, FDA may at the same time also publish regulations under section 515(b) of the act requiring premarket approval for many of the class III devices considered by the Panel, regardless of whether they are a high, medium, or low priority. Where practical, FDA will publish these section 515(b) regulations during the grace period (30 months) following classification, during which 30-month period a device classified into class III by FDA regulation may lawfully remain on the market without a premarket approval application. The grace period is provided for a section 501(f) of the act (21 U.S.C. 351(f)).

Exemptions for Class I Devices

Section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) provides that FDA may exempt a device recommended for classification into class I from a requirement under the following sections of the act: section 510 (21 U.S.C. 360), registration; section 519 (21 U.S.C. 360i), records and reports; and section 520(f) (21 U.S.C. 360j(f)), good manufacturing practice requirements.

Under section 510 of the act, a person "engaged in the manufacture, preparation, propagation, compounding, or processing of * * * a device or devices" must register with FDA (section 510 (b) through (i)), file a list of devices (section 510(j)), and notify FDA at least 90 days before beginning commercial distribution of a device (section 510(k)). (See Part 807 (21 CFR Part 807).) Section 510(g)(4) authorizes the agency to exempt a device from section 510 if it finds that compliance with that section is not necessary for the protection of the public health. In § 807.65 (21 CFR 807.65), FDA has exempted certain classes of persons from section 510 of the act. Several device panels have recommended that manufacturers of certain class I devices also be exempted from all or some of the requirements of section 510. The agency has determined that protection of the public health requires that manufacturers of medical devices, other than those already exempt under § 807.65, register and list their products with FDA to ensure that the agency can identify these manufacturers and their products and conduct necessary inspections.

The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions for certain devices. Thus, the agency has proposed to exempt manufacturers of certain devices from Subpart E of the Part 807 of the regulations, which implements section 510(k) of the Act. The agency does not, at this time, anticipate that premarket approval will be required for these devices. The agency believes that the semiannual updating of device listing under section 510(j)(2) of the act will provide FDA with adequate notice of new products within these generic types of devices.

Section 519 of the act authorizes FDA to issue regulations requiring device manufacturers, importers, and distributors to establish and maintain such records, make such reports, and provide such information as the agency may reasonably require to assure that devices are not adulterated or misbranded and to otherwise assure their safety and effectiveness. The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements is found in the device good manufacturing practice (GMP) regulation under Part 820 (21 CFR Part 820), published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA may publish other regulations under section 519 of the act, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. Whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempted from the requirements, and FDA will issue exemptions that are appropriate.

The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from most requirements of the device GMP regulation. As explained below, the exemption will not extend to two device GMP records requirements.

The device GMP regulation was published in final form in the **Federal Register** of July 21, 1978. At the time of the Panel's recommendations, the GMP regulation had not yet been promulgated, and the agency had not yet developed criteria for exempting manufacturers of class I device from GMP requirements. The agency has now decided that, if any one of the following criteria is met, FDA will consider exempting from the GMP regulation manufacturers of a class I device that is not labeled or otherwise represented as sterile. The agency will not, however, exempt manufacturers of a device from

general requirements concerning records or complaint files. The criteria are:

1. FDA has determined, based on adequate information about current practices in the manufacture of the device and about user experience with the device, that application of the GMP regulation is unlikely to improve the safety and effectiveness of the device.

2. FDA has determined that all possible defects relating to the safety and effectiveness of the device are readily detectable before use, either through visual examination by the user or routine testing before use, e.g., testing a clinical laboratory reagent with positive and negative controls.

3. FDA has determined that any defect in the device that is not readily detectable will not result in a device failure that could have an adverse effect on the patient or other user.

FDA has determined that no device that is labeled or otherwise represented as sterile will be exempted from the device GMP regulation. A sterile device must be subject to the entire GMP regulation to ensure that manufacturers adequately reduce the bioburden (number of microorganisms) on the device and its components during the manufacturing process. This reduction is accomplished through adherence to a comprehensive quality assurance program as is required by the GMP regulation, with adequate environmental controls, trained personnel, appropriate maintenance and calibration of sterilization equipment, recordkeeping concerning lot sterility, strict packaging and labeling controls, and other quality assurance measures.

The agency also has determined that no exemption from the device GMP regulation will extend to § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, or § 820.198 (21 CFR 820.198), with respect to complaint files. The agency believes that granting exemptions from these sections would not be in the public interest, and that compliance with these sections is not unduly burdensome for device manufacturers. To ensure that device manufacturers have adequate systems for complaint investigation and followup, all manufacturers are required to comply with the complaint file requirements. All device manufacturers also are required to comply with the general requirements concerning records to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturers corrective actions are adequate, and may determine whether the exemption from other section of the GMP regulation is still appropriate.

In general, FDA has not initiated proposals to exempt manufacturers of devices from requirements under section 510 or 520(f) of the act, but has acted on the basis of exemption recommendations of the device classification panels. However, FDA has proposed occasionally to exempt manufacturers of certain devices classified into class I or class II from the requirements of certain sections of the GMP regulation according to the above exemption criteria. Manufacturers and other interested persons may submit comments on the appropriateness of the proposed exemptions of manufacturers of devices, whether the exemptions are proposed in response to recommendations of the panels or on the agency's initiative. Comments requesting additional exemptions should be supported by information showing that the exemption of manufacturers of a device from the premarket notification requirement or the GMP regulation is consistent with the criteria discussed above.

Guidelines for Preparing Petitions Requesting Exemption or Variance From the Device GMP Regulation for Devices Classified Into Class I or Class II

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device GMP regulation. These petitions may be submitted in accordance with provisions of section 520(f)(2) of the act (21 U.S.C. 360j(f)(2)). The agency announced the availability of the guidelines in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

List of Radiology Devices

The following is a list of radiology devices that FDA is proposing to classify, the section in the Code of Federal Regulations under which the regulation classifying the device will be codified, the docket number of the proposed classification regulation, and the proposed classification of each device.

Section	Device	Docket No.	Class
	SUBPART B—RADIOLOGY DIAGNOSTIC DEVICES		
892.1100	Scintillation (gamma) camera.	78N-2743	II.
892.1110	Positron camera	78N-2744	II.
892.1130	Nuclear whole body counter.	78N-2745	II.
892.1170	Bone densitometer	78N-2746	II.
892.1200	Emission computed tomography system.	78N-2747	II.
892.1220	Fluorescent scanner	78N-2748	II.
892.1240	Radionuclide generator	78N-2749	II.
892.1300	Nuclear rectilinear scanner	78N-2750	II.
892.1310	Nuclear tomography system	78N-2751	II.
892.1320	Nuclear uptake probe	78N-2752	II.
892.1330	Nuclear whole body scanner.	78N-2753	II.
892.1350	Nuclear scanning bed	78N-2754	II.
892.1360	Radionuclide dose calibrator.	78N-2755	II.
892.1370	Nuclear anthropomorphic phantom.	78N-2756	II.
892.1380	Nuclear flood source phantom.	78N-2757	II.
892.1390	Radionuclide rebreathing system.	78N-2758	II.
892.1400	Nuclear sealed calibration source.	78N-2759	II.
892.1410	Nuclear electrocardiograph synchronizer.	78N-2760	II.
892.1420	Radionuclide test pattern phantom.	78N-2761	II.
892.1450	Telethermographic system	78N-2762	II, III
892.1480	Liquid crystal thermographic system.	78N-2763	I, II, III
892.1540	Nonfetal ultrasonic monitor	78N-2765	II.
892.1550	Ultrasonic pulsed doppler imaging system.	78N-2766	II.
892.1560	Ultrasonic pulsed echo imaging system.	78N-2767	II.
892.1570	Diagnostic ultrasonic transducer.	78N-2768	II.
892.1600	Angiographic x-ray system	78N-2769	II.
892.1610	Diagnostic x-ray beam-limiting device.	78N-2770	II.
892.1620	Cine or spot fluorographic x-ray camera.	78N-2771	II.
892.1630	Electrostatic x-ray imaging system.	78N-2772	II.
892.1640	Radiographic film marking x-ray system.	78N-2773	II.
892.1650	Image-intensified fluoroscopic x-ray system.	78N-2774	II.
892.1660	Non-image-intensified fluoroscopic x-ray system.	78N-2775	II.
892.1670	Spot-film device	78N-2776	II.
892.1680	Stationary x-ray system	78N-2777	II.
892.1700	Diagnostic x-ray high voltage generator.	78N-2778	II.
892.1710	Mammographic x-ray system.	78N-2779	II.
892.1720	Mobile x-ray system	78N-2780	II.
892.1730	Photofluorographic x-ray system.	78N-2781	II.
892.1740	Tomographic x-ray system	78N-2782	II.
892.1750	Computed tomography x-ray system.	78N-2783	II.
892.1760	Diagnostic x-ray tube housing assembly.	78N-2784	II.
892.1770	Diagnostic x-ray tube mount	78N-2785	II.
892.1820	Pneumoencephalographic chair.	78N-2788	II.
892.1830	Radiologic patient cradle	78N-2789	II.
892.1840	Radiographic film	78N-2790	I.
892.1850	Radiographic film casette	78N-2791	II.
892.1860	Radiographic film/cassette changer.	78N-2792	II.
892.1870	Radiographic film/cassette changer programmer.	78N-2793	II.
892.1880	Wall-mounted radiographic cassette holder.	78N-2794	II.
892.1890	Radiographic film illuminator.	78N-2795	II.
892.1900	Automatic radiographic film processor.	78N-2796	II.
892.1910	Radiographic grid	78N-2797	I.
892.1920	Radiographic head holder	78N-2798	I.
892.1930	Automatic contrast medium injector.	78N-2799	II.
892.1940	Radiologic quality assurance instrument.	78N-2800	I.
892.1950	Radiographic anthropomorphic phantom.	78N-2801	I.
892.1960	Radiographic intensifying screen.	78N-2802	I.
892.1970	Radiographic ECG/respirator synchronizer.	78N-2803	II.
892.1980	Radiologic table	78N-2804	II.
	SUBPARTS C–E [RESERVED]		
	SUBPART F—RADIOLOGY THERAPEUTIC DEVICES		
892.5050	Medical charged-particle radiation therapy system.	78N-2806	II.

Section	Device	Docket No.	Class
892.5300	Medical neutron radiation therapy system.	78N-2810...	II.
892.5650	Manual radionuclide applicator system.	78N-2813...	I.
892.5700	Remote controlled radionuclide applicator system.	78N-2814...	II.
892.5710	Radiation therapy beam-shaping block.	78N-2815...	II.
892.5730	Radionuclide brachytherapy source.	78N-2817...	II.
892.5740	Radionuclide teletherapy source.	78N-2818...	II.
892.5750	Radionuclide radiation therapy system.	78N-2819...	II.
892.5770	Powered radiation therapy patient support assembly.	78N-2820...	II.
892.5780	Light beam patient position indicator.	78N-2821...	II.
892.5840	Radiation therapy simulation system.	78N-2822...	II.
892.5900	X-ray radiation therapy system.	78N-2823...	II.
892.5930	Therapeutic x-ray tube housing assembly.	78N-2826...	II.
	SUBPART G—RADIOLOGY MISCELLANEOUS DEVICES		
892.6500	Personnel protective shield...	78N-2827...	II.

Devices Considered by Two or More Panels; Status of Radiologic Contrast Media

Occasionally a device was reviewed by two or more device classification panels. In these instances, the individual regulation for the device includes the recommendation of each of the sections or panels involved.

1. The General Medical Devices Panel recommends that disposable barium sulfate enema kits be classified into class I. The Obstetrics-Gynecology and Radiologic Devices Panel recommends that radiologic contrast media be classified into class I. The agency has determined that all radiologic contrast media, including barium enema kits, are to be regulated by FDA as drugs under section 201(g) of the act (21 U.S.C. 321(g)(1)) and not as devices.

2. The Obstetrics-Gynecology and Radiologic Devices Panel and the Circulatory Systems Devices Panel make classification recommendations concerning the opaque vascular catheters and the radiological catheter guide wires. The agency is not now publishing the Obstetrics-Gynecology and Radiologic Devices Panel's recommendations to classify these devices. FDA published these recommendations, and proposed classification regulations, when it published the recommendations of the Circulatory Systems Devices Panel (44 FR 13297; March 9, 1979).

Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel/section name	Publication date in FEDERAL REGISTER
Circulatory Systems Devices Panel.	March 9, 1979, 44 FR 13284-13434 (proposals); February 5, 1980, 45 FR 7904-7971 (final regulations).
Clinical Chemistry and Hematology Devices Panel:	
Clinical Chemistry Device Section	
Clinical Toxicology Device Section	
Hematology and Pathology Device Section.	September 11, 1979, 44 FR 52950-53063 (proposals); September 12, 1980, 45 FR 60576-60582 (final regulations).
General Medical Devices, Panel:	
General Hospital and Personal Use Device Section.	August 24, 1979, 44 FR 49844-49954 (proposals); October 21, 1980, 45 FR 69678-69737 (final regulations).
Gastroenterology-Urology Device Section.	January 23, 1981, 46 FR 7562-7641 (proposals).
Immunology and Microbiology Devices Panel:	
Immunology Device Section.	April 22, 1980, 45 FR 27204-27359 (proposals).
Microbiology Device Section.	April 22, 1980, 45 FR 27204-27359 (proposals).
Obstetrics-Gynecology and Radiologic Devices Panel:	
Obstetrics-Gynecology Device Section.	April 3, 1979, 44 FR 19894-19971 (proposals); February 26, 1980, 45 FR 12682-12720 (final regulations).
Radiology Device Section.....	January 29, 1982.
Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel:	
Ophthalmic Device Section	
Ear, Nose, and Throat Device Section	
Dental Device Section.....	December 30, 1980, 45 FR 85962-85970 (proposals).
Respiratory and Nervous System Devices Panel:	
Anesthesiology Device Section.	November 2, 1979, 44 FR 63292-63426 (proposals).
Neurological Device Section....	November 23, 1978, 43 FR 54640-55732 (proposals); September 4, 1979, 44 FR 51726-51778 (final regulations).
Surgical and Rehabilitation Devices Panel:	
Physical Medicine Device Section.	August 28, 1979, 44 FR 50458-50537 (proposals).
Orthopedic Device Section	
General and Plastic Surgery Device Section	

Diagnostic Ultrasound

In a notice of intent to propose rules published in the **Federal Register** of February 13, 1979 (44 FR 9542), the agency announced that it was considering an action program to reduce exposure to diagnostic ultrasound as much as practicable, consistent with the need for essential diagnostic information. However, at the present time, the agency has no plans to develop such an action program through rulemaking proceedings.

Radiation Exposure

The agency is concerned that individuals are being exposed to increasing amounts of radiation. On February 27, 1979, the Department of Health and Human Services issued the report of the Interagency Task Force on Ionizing Radiation (Ref. 1). On the question of reducing radiation exposure from diagnostic x-ray procedures, the Task Force report said: "For many medical radiation procedures, there is a large potential for reducing unnecessary radiation exposure. There are four sources of unnecessary exposure that may result from the medical use of radiation considered in this report: (1) Questionable clinical judgment in ordering some x-ray and other radiology procedures; (2) radiology technique (including use and maintenance of equipment); (3) inadequate or faulty equipment; and (4) lack of control for rapidly expanding new technology."

Panel Recommendations and FDA's Proposed Classifications

Section 892.1100; Docket No. 78N-2743; Scintillation (gamma) camera.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of scintillation (gamma) cameras:

1. A scintillation (gamma) camera is a device intended to be used to image the distribution of radionuclides in the body by means of a photon radiation detector. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that scintillation (gamma) cameras be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone will not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the spatial and energy resolution, the uniformity and geometric distortion of the image, the count rate response, and the dead time of the device, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health

Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that scintillation (gamma) camera be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1110; Docket No. 78N–2744; Positron camera.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of positron cameras:

1. Identification: A positron camera is a device intended to be used to image the distribution of positron-emitting radionuclides in the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device to be low priority.

3. Summary of reasons for recommendation: The Panel recommends that positron cameras be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone will not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the image resolution, uniformity, geometric distortion, quantum efficiency, count rate response, and dead time of the device, and that inclusion of this information in the labeling by voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that positron cameras be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1130; Docket No. 78N–2745; Nuclear whole body counter.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nuclear whole body counters:

1. Identification: A nuclear whole body counter is a device intended to be used to measure amounts of radionuclides in the entire body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that nuclear whole body counters be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone will not provide sufficient control over this characteristic. The panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the spatial and energy resolution of the device and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that nuclear whole body counters be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1170; Docket No. 78N–2746; Bone densitometer.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of bone densitometers:

1. Identification: A bone densitometer is a device intended to be used for medical purposes to measure bone density and mineral content by x-ray or gamma ray transmission measurements through the bone and adjacent tissues. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that bone densitometers be classified into class II because the Panel believes that a performance standard will control proper calibration. Miscalibration can cause unnecessarily high radiation levels to be used or may result in erroneous data leading to unnecessary radiation exposure to the patient from repeat procedures. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls will not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide a reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). The Panel also noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical

shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that bone densitometers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1200; Docket No. 78N–2747; Emission computed tomography system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of emission computed tomography systems:

1. Identification: An emission computed tomography system is a device that is intended to detect the location and distribution of gamma ray- and positron-emitting radionuclides in the body and produce cross-sectional images through computer reconstruction of the data. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical makers, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that emission computed tomography systems be classified into class II because the Panel believes that a performance standard is necessary to control those device characteristics that affect the quality of the image (for example, spatial resolution). Assured image quality will minimize unnecessary radiation exposure caused by repeat procedures due to inadequate device performance. The Panel also believes that electrical safety standards are required to minimize the hazard of electrical shock. Furthermore, because physical injury (trauma) to the patient or operator can result from structural or operating mechanism defects in the device (particularly in the moving patient table and in the camera head), a structural safety standard may be necessary. The Panel believes that general controls alone will not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the spatial and energy resolution of the device, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage. (c) Trauma: Failure of the device's structural integrity or control mechanism could cause injury to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that emission computed tomography systems be classified into class II (performance standards). FDA is concerned that device defects due to faulty manufacture might result is misdiagnosis or repeat procedures that increase unnecessarily the amount of radiation to which the patient is exposed. The device may not accurately reproduce the characteristic distribution of administered radionuclides. If the physician uses inaccurate data in managing the patient, the physician may prescribe a course of treatment that places the patient at risk unnecessarily.

The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1220; Docket No. 78N–2748; Fluorescent scanner.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of fluorescent scanners:

1. Identification: A fluorescent scanner is a device intended to be used to measure the induced fluorescent radiation in the body by exposing the body to certain x-rays or low-energy gamma rays. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that fluorescent scanners be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device shielding. The Panel believes that electrical safety standards are also required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the spatial resolution of the device, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). Also, the Panel noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that fluorescent scanners be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. the agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1240; Docket No. 78N–2749; Radionuclide generator.

The Radiological Device Classification Panel, an FDA advisory committee, made the following

recommendation regarding the classification of radionuclide generators:

1. Identification: A radionuclide generator is a device intended to be used for medical purposes to produce and accumulate a desired, relatively short-lived, radionuclide (daughter) by the decay of a stored longer-lived parent radionuclide. The radionuclides are generally contained in a shielded container. The device may include the shielding, piping, and fittings used to aid in the chemical separation (usually by elution) of the daughter from the parent radionuclide.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radionuclide generators be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device shielding. If the device piping or fittings break, potentially toxic materials could be released. The Panel believes that general controls alone will not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: (a) Excessive radiation: Improper function of this device can result in patient or operator exposure to excessive radiation that may cause tissue damage. (b) Toxicity: Breakage of the piping or fittings of the device can result in patient or operator exposure to a potentialy toxic chemical that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radionuclide generators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1300; Docket No. 78N-2750; Nuclear rectilinear scanner.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nuclear rectilinear scanners:

1. Identification: A nuclear rectilinear scanner is a device intended to be used to image the distribution of radionuclides in the body by means of a detector or detectors whose position moves in two directions with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that nuclear rectilinear scanners be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information to spatial and energy resolution of the device, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that nuclear rectilinear scanners be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1310; Docket No. 78N-2751; Nuclear tomography system.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of nuclear tomography systems:

1. Identification: A nuclear tomography system is a device that is intended to detect nuclear radiation in the body and produce images of a specific cross-sectional plane of the body by blurring or eliminating detail from other planes. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that nuclear tomography systems be classified into class II because the Panel believes that a performance standard will control device characteristics, particularly electromechanical malfunction, that affect the quality of the image and will prevent unnecessary radiation exposure to the patient from repeat procedures. The Panel believes that electrical safety standards are also required to minimize the hazard of electrical shock. The Panel believes that general controls alone will not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a standard. The Panel also recommends that the device labeling provide information on the spatial and energy resolution of the device and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that nuclear tomography systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1320; Docket No. 78N-2752; Nuclear uptake probe.

The Radiological Device Classification Panel, and The Ophthalmic Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of nuclear uptake probes:

1. Identification: A nuclear uptake probe is a device intended to be used to measure the amount of radionuclide taken up by a particular organ or body region. This generic type of device may include a single or multiple detector probe, signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). Both Panels recommend that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: Both Panels recommended that nuclear uptake probes be classified into class II (performance standards) because the Panels believe that electrical safety standards are required to minimize the hazard of electrical shock. The Panels believe that general controls along will not provide sufficient control over this characteristic. The Panels believe that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Radiological Device Classification Panel also recommends that the device's labeling provide information on the design energy, recommended operating distance, energy resolution, and field of view at the recommended operating distance, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' knowledge of, and clinical experience with, the device. The Radiological Device Classification Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the recommendations of both Panels and is proposing that nuclear uptake probes be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

FDA has reviewed the recommendations of both Panels for nuclear uptake probes and has determined that the classification of this device should be published in the part of the Code of Federal Regulations for radiology devices.

Section 892.1330; Docket No. 78N-2753; Nuclear whole body scanner.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nuclear whole body scanners:

1. Identification: A nuclear whole body scanner is a device intended to be used to measure and image the distribution of radionuclides in the body by means of a wide-aperture detector whose position moves in one direction with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: the Panel recommends that nuclear whole body scanners be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone will not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that information is sufficient to establish a standard. The Panel also recommends that the device's labeling provide information on the spatial and energy resolution of the device, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to Health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that nuclear whole body scanners be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1350; Docket No. 78N-2754; Nuclear scanning bed.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nuclear scanning beds:

1. Identification: A nuclear scanning bed is an adjustable bed intended to be used to support a patient during a nuclear medicine procedure.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that nuclear scanning beds be classified into class II because the Panel believes that electrical safety standards are required when appropriate to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that nuclear scanning beds be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1360; Docket No. 78N-2755; Radionuclide dose calibrator.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radionuclide dose calibrators:

1. Identification: A radionuclide dose calibrator is a radiation detection device intended to be used to assay radionuclides before their administration to patients.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radionuclide dose calibrators be classified into class II because the Panel believes that a performance standard is required to ensure proper design and calibration of the device. Miscalibration can cause unnecessarily high or insufficiently low radiation levels. A performance standard is necessary to establish an appropriate radiation dosage to a selected part of the body to ensure the desired therapeutic effect as well as to assay accurately radiophamaceuticals used in diagnostic procedures. The Panel believes that electrical safety standards are also required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clincial experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the operator.

(b) Excessive radiation: Improper calibration of this device can result in patient exposure to excessive radiation that may cause tissue damage or insufficient radiation for effective diagnosis or treatment.

FDA agrees with the Panel recommendation and is proposing that radionuclide dose calibrators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1370; Docket No. 78N–2756; Nuclear anthropomorphic phantom.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nuclear anthropomorphic phantoms:

1. Identification: A nuclear anthropomorphic phantom is a human tissue facsimile that contains a radioactive source or a cavity in which a radioactive sample can be inserted. It is intended to be used to calibrate nuclear uptake probes or other medical instruments.

2. Recommended classification: Class I (general controls). The Panel recommends that there be no exemptions.

3. Summary of reasons for recommendation: The Panel recommends that nuclear anthropomorphic phantoms be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' extensive experience with the device, and on their judgment that the device presents no significant risks to health. The device has been in use for many years.

5. Risks to health: None identified.

FDA disagrees with the Panel recommendation and is proposing that nuclear anthropomorphic phantoms be classified into class II (performance standards).

FDA believes that a performance standard will control the construction of, and the materials used in, the device to ensure proper composition and uniformity in the emission of radiation from the device. Failure of this device can cause miscalibration and result in misdiagnosis. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1380; Docket No. 78N–2757; Nuclear flood source phantom.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nuclear flood source phantoms:

1. Identification: A nuclear flood source phantom is a radiolucent container filled with a uniformly distributed solution of a desired radionuclide. It is intended to be used to calibrate a medical gamma camera/collimator system for uniformity of response.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that nuclear flood source phantoms be classified into class II because the Panel believes that a performance standard will control the construction and the material of the device to ensure uniformity in the emission of radiation from the device. Nonuniformity in emission can cause miscalibration and result in misdiagnosis. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the degree of uniformity of radiation emissions from the device, and that the inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: Misdiagnosis: Improper device material or construction could cause nonuniformity in the radiation emission from the device. This emission nonuniformity could lead to poor instrument calibration and result in misdiagnosis.

FDA agrees with the Panel recommendation and is proposing that nuclear flood source phantoms be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1390; Docket No. 78N–2750; Radionuclide rebreathing system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radionuclide rebreathing systems:

1. Identification: A radionuclide rebreathing system is a device intended to be used to contain a gaseous or volatile radionuclide or a radionuclide-labeled aerosol and permit it to be respired by the patient during nuclear medicine ventilatory tests (testing process of exchange between the lungs and the atmosphere). This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radionuclide rebreathing systems be classified into class II because the Panel believes that a performance standards will minimize the hazard of unintended leakage of radiation and radioactive material caused by faulty construction of the device and shielding. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). The Panel also noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage or insufficient radiation for effective diagnosis or treatment.

FDA agrees with the Panel recommendation and is proposing that radionuclide rebreathing systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1400; Docket No. 78N–2759; Nuclear sealed calibration source.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nuclear sealed calibration sources:

1. Identification: A nuclear sealed calibration source is an encapsulated reference radionuclide intended to be used for calibration of medical nuclear radiation detectors.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that nuclear sealed calibration sources be classified into class II because the panel believes that a performance standard will minimize the hazard of unintended leakage of radioactive material caused by faulty materials and construction of the device. This device must have a predictable radiation level and remain sealed. The Panel believes that general controls alone will not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide a reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the quantity of radionuclide contained in the device, and that the inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that nuclear sealed calibration sources be classified into class II (performance standards). The agency believes that a performance standard is necessary for nuclear sealed calibration sources because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

Section 892.11410; Docket No. 78N–2760; Nuclear electrocardiograph synchronizer.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of nuclear electrocardiograph synchronizers:

1. Identification: A nuclear electrocardiograph synchronizer is a device intended for use in nuclear radiology to relate the time of image formation to the cardiac cycle during the production of dynamic cardiac images.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that nuclear electrocardiograph synchronizers be classified into class II (performance standards) because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that nuclear electrocardiograph synchronizers be classified into class II (performance standards). The agency believes that a performance standard is necessary for nuclear electrocardiograph synchronizers because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1420; Docket No. 78N–2761; Radionuclide test pattern phantom.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of radionuclide test pattern phantoms:

1. Identification: A radionuclide test pattern phantom is a device that consists of an arrangement of radiopaque or radioactive

material sealed in a solid pattern that is intended to serve as a test for a performance characteristic of a nuclear medicine imaging device.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radionuclide test pattern phantoms be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation leakage caused by faulty material factors and construction of the device. The device must remain sealed. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the quantity of radionuclide contained in the device, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Nuclear Regulatory Commission has promuglated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radionuclide test pattern phantoms be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for the device.

Section 892.1450; Docket No. 78N-2762; Telethermographic system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of telethermogrtaphic systems:

1. Identification: A telethermographic system is a device with a detector that is intended to measure, without touching the patient's skin, the self-emanating infrared radiation that reveals the temperature variations of the surface of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that telethermographic systems be classified into class II because the panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the spatial resolution, temperature resolution, and sensitivity of the device and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees in part with the Panel recommendation and is proposing that telethermographic systems be classified into class II (performance standards) except when intended for use alone in diagnostic screening for detection of breast cancer. The agency has reviewed the recommendation and has obtained other data and information describing the use of this device to screen for or diagnose breast cancer. When used to detect breast pathology, the telethermographic system should be used only as an adjunct to clinical examination and mammography (Refs. 2 and 3). The device should be used only when proper patient history and physical breast palpation are included as part of the clinical protocol. The agency is particularly concerned about the high rate of false-negative results when this device is used alone in screening for breast cancer. The National Institutes of Health, the National Cancer Institute, and the American Cancer Society sponsored a consensus development conference on September 14-16, 1977 to consider wide-scale beast cancer screening, including that conducted by the Breast Cancer Detection Demonstration Projects (BCDDP). The Consensus Development Panel stated that new diagnostic and screening procedures clearly are needed (Ref. 4). Therefore, there should be renewed emphasis on research on noninvasive techniques, such as thermography. Unlike mammography, thermography does not present the inherent risk of radiation exposure. However, because the potential benefits of thermography remain undocumented, use of this device as a routine part of the BCDDP screening should be discontinued. FDA believes that a performance standard is necessary for this device when it is used as an adjunct to physical palpation or mammography because general controls alone are insufficient to control the risks to health presented by the device. When the device is so used, a performance standard will provide reasonable assurance of its safety and effectiveness. The agency also believes that there is sufficient information to establish a performance standard for this use of this device.

Telethermographic systems are capable of, and have been offered for, use alone as a diagnostic screening procedure for the detection of breast cancer. Because of the concerns described above, FDA is proposing that telethermographic systems for use without physical palpation or mammography in diagnostic screening for detection of brease cancer be classified into class III (premarket approval). The agency believes that the device is purported or represented to be for a use (use alone in diagnostic screening for detection of breast cancer), which is of substantial importance in preventing impairment of human health. The agency also believes that this device presents a potential unreasonable risk of illness or injury. The device's failure to detect breast cancer, and thereby to enable treatment to begin during the early stages of cancer, may allow the undetected disease to worsen so that effective treatment may no longer be possible. Premarket approval is necessary for the device for use alone in diagnostic screening for detection of breast cancer because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device for this use. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device for this use.

Section 892.1480; Docket No. 78N–2763; Liquid crystal thermographic system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of liquid crystal thermographic systems:

1. Identification: A non-electrically powered or an AC-powered liquid crystal thermographic system is a non-electrically powered or an AC-powered device intended to be applied to the skin. It displays the color patterns of heat sensitive cholestric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include image display and recording equipment, patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

2. Recommended classification: Class I (general controls) for the nonpowered device; the Panel recommends that there be no exemptions. Class II (performance standards) for the AC-powered device; the Panel recommends that establishing a performance standard for the AC-powered device be a low priority.

3. Summary of reasons for recommendation: the Panel recommends that nonpowered liquid crystal thermographic systems be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Panel recommends that the device be used only to map the patterns showing variations in the body skin temperatures. The device should not be used to indicate a specific value or to make a specific diagnosis. The Panel specifically excludes from its recommendation use of the device alone to screen for detection of breast cancer. The Panel also recommends that the device's labeling provide information on the temperature range of response, shelf life, and instructions for use to ensure adequate skin contact, and that inclusion of this information in the labeling be voluntary.

The Panel recommends that powered liquid crystal thermographic systems be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel recommends that the device be used only to map patterns showing variations in body skin temperatures. The device should not be used to indicate a specific value or to make a specific diagnosis. The Panel specifically excludes from its recommendation use of the device alone to screen for detection of breast cancer. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the temperature range of response, shelf life, and instructions for use to ensure adequate skin contact, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: Liquid crystal thermographic systems were the principal topic of a Panel meeting. At the meeting, the Panel heard presentations from medical researchers and industry on the medical use of liquid crystal technology (Ref. *5*). The Panel members also had available an extensive collection of reprinted materials provided to them in connection with the meeting (Refs. *6* through *12*). Four references dealt directly with the use of thermography in the diagnosis of breast disease. The references concluded that thermography may be useful as an indicator of the extent of breast disease in patients known to have abnormal tissue, but that the device is unreliable when used as a screening technique because of its unacceptable false-negative rate (Refs. *6* throught *9*). Three other references presented data showing the usefulness of liquid crystal thermography in illustrating abnormal skin surface temperatures (Refs. *10, 11,* and *12*). The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health for the nonpowered device: None identified. Risks to health for the AC-powered device: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees in part with the Panel recommendations and is proposing that, except when either type of the device is intended for use alone in diagnostic screening for detection of breast cancer, that nonpowered liquid crystal thermographic systems be clasified into class I (general controls) with no exemptions and that AC-powered liquid crystal thermographic systems be classified into class II (performance standards). The agency believes that the controls described above are sufficient to provide reasonable assurance of the safety and effectiveness of the device except when intended for use alone in diagnostic screening for detection of breast cancer.

The agency has reviewed the recommendations and has obtained other data and information describing the investigational use of this device to screen for or diagnose breast cancer, and FDA is particularly concerned about the high rate of false-negative results from use alone, in screening for breast cancer, of either the nonpowered or the AC-powered types of the device. The agency shares the Panels' views that nonpowered or AC-powered liquid crystal thermographic systems should be used only as an adjunct to clinical examination and mammography. The device should be used only when proper patient history and physical breast palpation are included as part of the clinical protocol. The National Institutes of Health, the National Cancer Institute, and the American Cancer Society sponsored a consensus development conference on September 14–16, 1977 to consider wide-scale breast cancer screening, including that conducted by the Breast Cancer Detection Demonstration Projects (BCDDP). The Consensus Development Panel stated that new diagnostic and screening procedures clearly are needed (Ref. *13*). Therefore, there should be renewed emphasis on research on noninvasive techniques, such as thermography. Unlike mammography, thermography does not present the inherent risk of radiation exposure. However, because the potential benefits of thermography remain undocumented, use of this device as a routine part of the BCDDP screening should be discontinued.

Both the nonpowered and the AC-powered type of the device are capable of, and have been offered for, use alone as a diagnostic screening procedure for the detection of breast cancer. Because of the concerns described above, FDA is proposing that nonpowered and AC-powered liquid crystal thermographic systems for use without physical palpation or mammography in diagnostic screening for breast cancer be classified into class III (premarket approval). The agency believes that both the nonpowered and the AC-powered liquid crystal thermographic systems are purported or represented to be for a use (use alone in diagnostic screening for detection of breast cancer) which is of substantial importance in preventing impairment of human health. The agency also believes that both the nonpowered and the AC-powered liquid crystal thermographic systems present a potential unreasonable risk of illness or injury. The devices' failure to detect breast cancer, and thereby to enable treatment to begin during the early stages of cancer, may allow the untreated disease to worsen so that effective treatment may no longer be possible. Premarket approval is necessary for the device for use alone in diagnostic screening for detection of breast cancer because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device for this use. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device for this use.

Section 892.1540; Docket No. 78N-2765; Nonfetal ultrasonic monitor.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of nonfetal ultrasonic monitors:

1. Identification: A nonfetal ultrasonic monitor is a device that projects a continuous high-frequency sound wave into body tissue other than a fetus to determine frequency changes (doppler shift) in the reflected wave and is intended to be used in the investigation of nonfetal blood flow and of other nonfetal body tissues in motion. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that nonfetal ultrasonic monitors be classified into class II (performance standards) because the Panel believes that standards are necessary to ensure that the emitted ultrasonic energy does not reach levels of radiation unsafe to the patient. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of this device, and that information is sufficient to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on an extensive review of the data presented to it and to the Biologic Effects of Ultrasound Subcommittee of the Obstetrical and Gynecological Device Classification Panel (Ref. 14). These data, in conjunction with the personal knowledge and wide experience of some Panel members, reveal no observable damage to tissue occurring at power levels below 100 milliwatts per square centimeter (spatial peak, temporal average) of ultrasonic energy with a time exposure normal for disgnostic purposes. This finding has been published in a statement of the American Institute of Ultrasound in Medicine (AIUM) (Ref. 15). To the Panel's knowledge, no currently marketed device exceeds that power limit. A followup study of children exposed to diagnostic doses in the womb found no evidence of deleterious effects of ultrasound (Ref. *18*). However, the Panels do recommend that exposure (duration, area, and output intensity) be minimized, consistent with obtaining necessary clinical information, in any ultrasonic examination of the female abdomen when pregnancy is possible because the effects upon the unborn from routine clinical use are unknown at this time. The chairman of a technical committee of the National Electrical Manufacturers' Association (NEMA) presented a proposal for diagnostic ultrasonic equipment parameters to the Biologic Effects on Ultrasound Subcommittee (Ref. *16*). The Obstetrical and Gynecological Device Classification Panel recommends that NEMA's maximum allowable values of ultrasonic energy and parameters suggested for the labeling of ultrasonic devices be used as interim guidelines for developing a performance standard for diagnostic ultrasonic devices.

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Tissue damage: The device's ultrasonic energy may produce tissue damage if the energy output is not controlled.

FDA agrees with the Panel recommendation and is proposing that nonfetal ultrasonic monitors be classified into class II (performance standards). The agency believes that the nonfetal ultrasonic monitor must meet certain measurement requirements to assure that it produces signals corresponding to the physiological condition. Stratmeyer's review (Ref. *17*) of the possible biological effects of ultrasound includes references to investigations showing that exposures of ultrasonic energy similar to those used in ultrasonic diagnostic devices may cause biological effects in laboratory animals. Although those investigations are cause for concern, the agency regards them as inconclusive at this time. The studies have yet to be verified, and some investigators question the methods or the findings of these investigations or their applicability to humans. The Biological Effects of Ultrasound Subcommittee of FDA's Obstetrical and Gynecological Device Classification Panel has reviewed the possible adverse effects of diagnostic ultrasound devices. (The Subcommittee was established because of FDA's special concerns about the obstetrical use of ultrasound, which are based on the animal studies referred to above that showed various biological effects from prenatal ultrasound exposures (Ref. *17*).) The Subcommittee concluded that there is sufficient information available to establish a standard for diagnostic ultrasound devices generally (Refs. *18, 19,* and *20*).

FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1550; Docket No. 78N-2766; Ultrasonic pulsed doppler imaging system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ultrasonic pulsed doppler imaging systems:

1. Identification: An ultrasonic pulsed doppler imaging system is a device that combines the features of continuous wave doppler-effect technology with pulsed-echo effect technology and is intended to be used to determine stationary body tissue characteristics such as depth or location of tissue interfaces or dynamic tissue characteristics such as velocity of blood or tissue motion. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that ultrasonic pulsed doppler imaging systems be classified into class II (performance standards) because the Panel believes that standards are necessary to assure that the emitted ultrasonic energy does not reach levels of radiation unsafe to the patient. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of this device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on an extensive review of the data presented to it and to the Biologic Effects of Ultrasound Subcommittee of the Obstetrical and Gynecological Device Classification Panel (Ref. *21*). These data, in conjunction with the personal knowledge and wide experience of some Obstetrical and Gynecological Device Classification Panel members, reveal no observable damage to tissue occurring at power levels below 100 milliwatts per square centimeter (spatial peak, temporal average) of ultrasonic energy with a time exposure normal for diagnostic purposes. This finding has been published in a statement of the American Institute of Ultrasound in Medicine (AIUM) (Ref. *22*). To the Panel's knowledge, no currently marketed device exceeds that power limit. A followup study of children exposed to diagnostic doses in the womb found no evidence of deleterious effects of ultrasound (Ref. *25*). However, the Panels do recommend that exposure (duration, area, and output intensity) be minimized, consistent with obtaining necessary clinical information, in any ultrasonic examination of the female abdomen when pregnancy is possible because the effects upon the unborn from

routine clinical use are unknown at this time. The chairperson of a technical committee of the National Electrical Manufacturers' Association (NEMA) presented a proposal for diagnostic ultrasonic equipment parameters to the Biological Effects of Ultrasound Subcommittee (Ref. *23*). The Obstetrical and Gynecological Device Classification Panel recommends that NEMA's maximum allowable values of ultrasonic energy and parameters suggested for the labeling of ultrasonic devices be used as interim guidelines for developing a performance standard for diagnostic ultrasonic devices.

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Tissue damage: The device's ultrasonic energy may produce tissue damage if the energy output is not controlled.

FDA agrees with the Panel recommendation and is proposing that ultrasonic pulsed doppler imaging systems be classified into class II (performance standards). The agency believes that ultrasonic pulsed doppler imaging systems must meet certain measurement requirements to ensure that they produce signals corresponding to the physiological condition. Stratmeyer's review (Ref. *24*) of the possible biological effects of ultrasound includes references to investigations showing that exposures of ultrasonic energy similar to those used in diagnostic devices may cause biological effects in laboratory animals. Although those investigations are cause for concern, the agency regards them as inconclusive at this time. The studies have yet to be verified, and some investigators question the methods or the findings of these investigations or their applicability to humans. The Biological Effects of Ultrasound Subcommittee of FDA's Obstetrical and Gynecological Device Classification Panel has reviewed the possible adverse effects of diagnostic ultrasound devices. (The Subcommittee was established because of FDA's special concerns about the obstetrical use of ultrasound, which are based on the animal studies referred to above that showed various biological effects from prenatal ultrasound exposures (Ref. *24*).The Subcommittee concluded that there is sufficient information available to establish a standard for diagnostic ultrasound devices generally (Refs. *25*, *26*, and *27*).

The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 829.1560; Docket No. 78N-2767; Ultrasonic pulsed echo imaging system.

The Radiological Device Classification Panel and the Ophthalmic Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of ultrasonic pulsed echo imaging systems:

1. Identification: An ultrasonic pulsed echo imaging system is a device that is intended to project a pulsed sound beam into body tissue to determine the depth or location of the tissue interfaces and to measure the duration of an acoustic pulse from the transmitter to the tissue interface and back to the receiver. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). Both Panels recommend that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: Both Panels recommend that ultrasonic pulsed echo imaging systems be classified into class II (performance standards) because the Panels believe that standards are necessary to ensure that the emitted ultrasonic energy does not reach levels of radiation unsafe to the patient. The Panels believe that electrical safety standards also are required to minimize the hazard of electrical shock. The Panels believe that general controls alone would not provide sufficient control over these characteristics. The Panels believe that a performance standard will provide reasonable assurance of the safety and effectiveness of this device, and that information is sufficient to establish a performance standard. The Ophthalmic Device Classification Panel recommends that the device labeling provide information on the accuracy, reproducibility, or limitations of the measurements of the device.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' knowledge of, and clinical experience with, the device and on an extensive review of the data presented to the Panels and to the Biologic Effects of Ultrasound Subcommittee of the Obstetrical and Gynecological Device Classification Panel (Ref. *28*). These data, in conjunction with the personal knowledge and wide experience of some Obstetrical and Gynecological Device Classification Panel members, reveal no observable damage to tissue occurring at power levels below 100 milliwatts per square centimeter (spatial peak, temporal average) of ultrasonic energy with a time exposure normal for diagnostic purposes. This finding has been published in a statement of the American Institute of Ultrasound in Medicine (AIUM) (Ref. *29*). To the Panel's knowledge, no currently marketed device exceeds that power limit. A followup study of children exposed to diagnostic doses in the womb found no evidence of deleterious effects of ultrasound (Ref. *32*). However, the Panels do recommend that exposure (duration, area, and output intensity) be minimized, consistent with obtaining necessary clinical information, in any ultrasonic examination of the female abdomen when pregnancy is possible because the effects upon the unborn from routine clinical use are unknown at this time. The chairman of a technical committee of the National Electrical Manufacturers' Association (NEMA) presented a proposal for diagnostic ultrasonic equipment parameters to the Biological Effects of Ultrasound Subcommittee (Ref. *30*). The Obstetrical and Gynecological Device Classification Panel recommends that NEMA's maximum allowable values of ultrasonic energy and parameters suggested for the labeling of ultrasonic device be used as interim guidelines for developing a performance standard for diagnostic ultrasonic devices.

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Tissue damage: The device's ultrasonic energy may produce tissue damage if the energy output is not controlled.

FDA agrees with both Panels' recommendations and is proposing that ultrasonic pulsed echo imaging systems be classified into class II (performance standards). The agency believes that ultrasonic pulsed echo imaging systems must meet certain measurement requirements to ensure that they produce signals corresponding to the physiological condition. Stratmeyer's review (Ref. *31*) of the possible biological effects of ultrasound includes references to investigations showing that exposures of ultrasonic energy similar to those used in ultrasonic diagnostic devices may cause biological effects in laboratory animals. Although those investigations are cause for concern, the agency regards them as inconclusive at this time. The studies have yet to be verified, and some investigators question the methods or the findings of these investigations or their applicability to humans. The Biological Effects of Ultrasound Subcommittee of FDA's Obstetrical and Gynecological Device Classification Panel has reviewed the possible adverse effects of diagnostic ultrasound devices. (The Subcommittee was established because of FDA's special concerns about the obstetrical use of ultrasound, which are based on the animal studies referred to above that showed various biological effects from prenatal ultrasound exposures (Ref. *31*).) The Subcommittee concluded that there is sufficient information available to establish a standard for diagnostic

ultrasound devices generally (Refs. *32, 33,* and *34*).

The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1570; Docket No. 78N–2768; Diagnostic ultrasonic transducer.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of diagnostic ultrasonic transducers:

1. Identification: A diagnostic ultrasonic transducer is a device made of a piezoelectric material that converts electrical signals into acoustic signals and acoustic signals into electrical signals. It is intended for use in diagnostic medical ultrasonic devices. Accessories for this generic type of device include transmission media for acoustically coupling the transducer to the body surface such as, acoustic gel, paste, or a flexible fluid container.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that diagnostic ultrasonic transducers be classified into class II because the Panel believes that standards are necessary to ensure that emitted ultrasonic energy does not reach levels of radiation unsafe to the patient. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone will not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of this device, and that information is sufficient to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on an extensive review of the data presented to it and to the Biologic Effects of Ultrasound Subcommittee of the Obstetrical and Gynecological Device Classification Panel (Ref. *35*). These data, in conjunction with the personal knowledge and wide experience of some Panel members, reveal no observable damage to tissue occurring at power levels below 100 milliwatts per square centimeter (spatial peak, temporal average) of ultrasonic energy with a time exposure normal for diagnostic purposes. This finding has been published in a statement of the American Institute of Ultrasound in Medicine (AIUM) (Ref. *36*). To the Panel's knowledge, no currently marketed device exceeds that power limit. A followup study of children exposed to diagnostic doses in the womb found no evidence of deleterious effects of ultrasound (Ref. *39*). However, the Panel does recommend that exposure (duration, area, and output intensity) should be minimized, consistent with obtaining necessary clinical information, in any ultrasonic examination of the female abdomen when pregnancy is possible because the effects upon the unborn from routine clinical use are unknown at this time. The chairman of a technical committee of the National Electrical Manufacturers' Association (NEMA) presented a proposal for diagnostic ultrasonic equipment parameters to the Biologic Effects of Ultrasound Subcommittee (Ref. *37*). The Obstetrical and Gynecological Device Classification Panel recommends that NEMA's maximum allowable values of ultrasonic energy and parameters suggested for the labeling of ultrasonic devices be used as interim guideline for developing a performance standard for diagnostic ultrasonic devices.

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Tissue damage: The device's ultrasonic energy may produce tissue damage if the energy output is not controlled.

FDA agrees with the Panel recommendation and is proposing that diagnostic ultrasonic transducers be classified into class II (performance standards). The agency believes that ultrasonic devices must meet certain measurement requirements to ensure they produce signals corresponding to the physiological condition. Stratmeyer's review (Ref. *38*) of the possible biological effects of ultrasound includes references to investigations showing that exposures of ultrasonic energy similar to those used in ultrasonic diagnostic devices may cause biological effects in laboratory animals. Although those investigations are cause for concern, FDA regards them as inconclusive at this time. The studies have yet to be verified, and some investigators question the methods or the findings of these investigations or their applicability to humans. The Biological Effects of Ultrasound Subcommittee of FDA's Obstetrical and Gynecological Device Classification Panel has reviewed the possible adverse effects of diagnostic ultrasound devices. (The Subcommittee was established because of FDA's special concerns about the obstetrical use of ultrasound, which are based on the animal studies referred to above that showed various biological effects from prenatal ultrasound exposures (Ref. *38*).) The Subcommittee concluded that there is sufficient information available to establish a standard for diagnostic ultrasound devices generally (Refs. *39, 40,* and *41*).

The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1600; Docket No. 78N–2769; Angiographic x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of angiographic x-ray systems:

1. Identification: A angiographic x-ray system is a device intended for radiologic visualization of the heart, blood vessels, or lymphatic system during or after injection of a contrast medium. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that angiographic x-ray systems be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device shielding. The Panel believes that electrical safety standards are also required to minimize the hazard of electrical shock. The Panel believes that general controls alone will not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that information is sufficient to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health, FDA, has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30–1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that angiographic x-ray systems be classified

into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1610; Docket No. 78N–2770; Diagnostic x-ray beam-limiting device.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of diagnostic x-ray beam-limiting devices:

1. Identification: A diagnostic x-ray beam-limiting device is a device such as a collimator, a cone, or an aperture that is intended to restrict the dimensions of a diagnostic x-ray field by limiting the size of the primary x-ray beam.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that diagnostic x-ray beam-limiting devices be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation from an inaccurately directed or limited radiation beam or from leakage of radiation caused by faulty construction of the device shielding. If this device is not properly aligned with the image receptor, the patient or operator could be exposed to hazardous radiation. Malfunction or faulty manufacture that causes the x-ray field to have dimensions other than those required could also expose the patient or operator to radiation unnecessarily. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that information is sufficient to establish a performance standard. The Panel also recommends that the device's labeling provide information on the size of the field at a specified distance and the lead equivalent radiopacity of the device, and that inclusion of this information in the labeleing be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30–1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that diagnostic x-ray beam-limiting devices be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1620; Docket No. 78N–2771; Cine or spot fluorographic x-ray camera.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of cine or spot fluorographic x-ray cameras:

1. Identification: A cine or spot fluorographic x-ray camera is a device intended to photograph diagnostic images produced by x-rays with an image intensifier.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that cine or spot fluorographic x-ray cameras be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that information is sufficient to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that cine or spot fluorographic x-ray cameras be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1630; Docket No. 78N–2772; Electrostatic x-ray imaging system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of eletrostatic x-ray imaging systems:

1. Identification: an electrostatic x-ray imaging system is a device intended for medical purposes that uses an electrostatic field across a semiconductive plate, a gas-filled chamber, or other similar device to convert a pattern of x-radiation into an electrostatic image and, subsequently, into a visible image. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that electrostatic x-ray imaging systems be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that information is sufficient to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that electrostatic x-ray imaging systems be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient

information to establish a standard to provide this assurance.

Section 892.1640; Docket No. 78N–2773; Radiographic film marking x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiographic film marking x-ray systems:

1. Identification: A radiographic film marking x-ray system is a device intended for medical purposes to add identification and other information onto radiographic film by means of x-ray exposure.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radiographic film marking x-ray systems be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation. This device is intended to produce radiation solely to affix information onto x-ray films and should not allow significant amounts of radiation to reach any person. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that information is sufficient to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for cabinet x-ray systems (21 CFR 1020.40), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radiographic film marking x-ray systems be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1650; Docket No. 78N–2774; Image-intensified fluoroscopic x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of image-intensified fluoroscopic x-ray systems:

1. Identification: An image-intensified fluoroscopic x-ray system is a device intended to visualize anatomical structures by converting a pattern of x-radiation into a visible image through electronic amplification. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that image-intensified fluoroscopic x-ray systems be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation from an inaccurately limited or directed radiation beam. The Panel states that the x-ray field size and beam size must be controlled. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the specifications of the image-intensifier tube, conversion efficiency, quantum detection efficiency, output contrast, resolution, and field uniformity, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30–1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). The Panel also noted information and data contained in an article by Miller et al. (Ref. *42*) and the two-volume text by Margulis and Burhenne (Ref. *43*).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that image-intensified fluoroscopic x-ray systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide the assurance.

Section 892.1660; Docket No. 78N–2775; Non-image-intensified fluoroscopic x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of non-image-intensified fluoroscopic x-ray systems:

1. Identification: A non-image-intensified fluoroscopic x-ray system is a device intended to be used to visualize anatomical structures by using a fluorescent screen to convert a pattern of x-radiation into a visible image. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: The Panel recommends that this device be banned and removed from the market.

3. Summary of data on which the recommendation is based: The Panel recommends that non-image-intensified fluoroscopic x-ray systems be removed from the market because other devices that are more effective and that are safety can perform the same task. The Panel believes that the non-image-intensified fluoroscopic x-ray systems are not effective, and that patients are exposed to unnecessary radiation. The Panel believes that a performance standard for fluoroscopic x-ray systems should require the use of image intensification and that the x-ray field size and beam size must be controlled. The Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard requiring use of image intensification will provide reasonable assurance of the safety of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and experience with, the device. The Panel members discussed the effectiveness of the direct-viewing fluoroscopic system, which has no image intensification (Refs. *44* through *46*). At their meeting of February 25, 1977, the Panel members voted five-to-one that this device

should be removed from the market (Ref. *47*). The Panel reasoned that while other devices are available which are safe and effective, this device is not effective without image intensification. As a consequence, patients are exposed to unnecessarily high doses of radiation when this device is used. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30–1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA disagrees with the Panel recommendation and is proposing that non-image-intensified fluoroscopic x-ray systems be classified into class II (performance standards). FDA believes that available evidence is not sufficient to remove non-image-intensified fluoroscopic x-ray systems from the market. Although this device may be less effective than image-intensified systems in producing diagnostic images, available data do not support the opinion that this device is not effective.

The agency has found little comparative data in the literature regarding the relative effectiveness of, or radiation doses from, image-intensified and non-image-intensified fluoroscopic x-ray systems. Unpublished data derived from the 1970 X-Ray Exposure Study conducted by the Public Health Service (Ref. *48*) show, from a limited number of surveys, that the exposure rates from the two devices, when properly used, are approximately the same. In addition, a recent artricle by Loehr, Vogel, Reinhart and Jantzen (Ref. *49*) states that, in most instances, patient dose increased when non-image-intensified systems were replaced with image-intensified systems. Thus, the possible benefit of increased diagnostic information from image-intensified systems was obtained at increased radiation dose to the patient.

FDA acknowledges that image-intensified fluoroscopy may be a more effective diagnostic tool than non-image-intensified fluoroscopy. However, in certain instances, non-image-intensified fluoroscopic x-ray systems may serve a useful purpose. For example, in some remote areas image-intensified fluoroscopic x-ray systems are not available. In addition, repair of image-intensified x-ray systems in remote health care facilities may be difficult to obtain in a timely fashion. Thus, removing this device from the market could severely limit the availability of necessary disgnostic tests in such facilities.

The agency notes that the better effectiveness of image-intensified fluoroscopy has been recognized in the memorandum to Federal health care facilities concerning the use of diagnostic x-ray examinations that was published in the **Federal Register** of February 1, 1978 (43 FR 4377). In this document, Federal facilities were directed to use, wherever possible, image-intensified fluoroscopic x-ray systems with electronic image holding features. It was implicitly recognized, however, that the use of such equipment may not always be feasible.

FDA is currently helping to implement the memoradnum to Federal health care facilities. Furthermore, the Bureau of Radiological Health of FDA is working to establish a voluntary program which would translate this guidance into recommendations that may be applicabile to non-Federal facilities as well. This voluntary program will help to decrease the use of non-image-intensified fluoroscopy at facilities where the use of image-intensified fluoroscopy is reasonable or necessary.

FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control any risks to health presented by this device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1670; Docket No. 78N–2776; Spot-film device.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of spot-film devices:

1. Identification: A spot-film device is an electromechanical component of a fluoroscopic x-ray system that is intended to be used for medical purposes to position a radiographic film cassette to obtain radiographs during fluoroscopy.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that spot-film devices be classified into class II because the Panel believes that a performance standard is necessary to establish controls on the device characteristics, particularly proper alignment, that affect the quality of the image and that could cause unnecessary radiation exposure from repeat procedures. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristrics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that spot film devices be classified into class II (performance standards). FDA believes that performance standards are necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1680; Docket No. 78N–2777; Stationary x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of stationary x-ray systems:

1. Identification: A stationary x-ray system is a permanently installed diagnostic system intended to generate and control x-rays for examination of various anatomical regions. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device by a low priority.

3. Summary of reasons for recommendation: The Panel recommends that stationary x-ray systems be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device. The Panel believes that electrical safety standards also

are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable asurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that stationary x-ray systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1700; Docket No. 78N–2778; Diagnostic x-ray high voltage generator.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of diagnostic x-ray high voltage generators:

1. Identification: A diagnostic x-ray high voltage generator is a device that is intended to supply and control the electrical energy applied to a diagnostic x-ray tube for medical purposes. This generic type of device may include a converter that changes alternating current to direct current, filament transformers for the x-ray tube, high voltage switches, electrical protective devices, or other appropriate elements.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that diagnostic x-ray high voltage generators be classified into class II because the Panel believes that a standard will control the characteristics of the device that affect the quality of the image and will consequently reduce the possibility of unnecessary radiation exposure to the patient from the need to repeat procedures. The voltage, amperage, and time factors must be accurately controlled, because a small calibration change can cause a significant change in the quality of the image. The Panel recommends that manufacturers incorporate step increments for calibration, particularly on amperage and time controls, which facilitate selection of exposure parameters. The Panel believes that general controls would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that sufficient information is available to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. Mr. Melvin Judkins, a Panel member, described the device characteristics that must be controlled (Ref. *50*). He also presented the Report of the Inter-Society Commission for Heart Disease Resources that defines optimal facility and equipment criteria for conventional chest x-rays and radiologic equipment requirements for cardiovascular surgical operating rooms and intensive care units (Ref. *51*). The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that diagnostic x-ray high voltage generators be classified into class II (performance standards). The agency has reviewed the Panel recommendation and has obtained other data and information concerning this device. The agency believes that it is essential that technical variables (kilovoltage, milliamperes, exposure time, and focal spot size) are accurate and reproducible to produce radiographs of consistent quality. FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1710; Docket No. 78N–2779; Mammographic x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of mammographic x-ray systems:

1. Identification: A mammographic x-ray system is a device intended to be used to produce radiographs of the breast. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that mammographic x-ray systems be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device's shielding. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that information is sufficient to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that mammographic systems be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1720; Docket No. 78N-2780; Mobile x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of mobile x-ray systems:

1. Identification: A mobile x-ray system is a transportable device system intended to be used to generate and control x-rays for diagnostic procedures. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that mobile x-ray systems be classified into class II because the Panel believes a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device shielding. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. Furthermore, because physical injury (trauma) to the patient or operator can result from structural or operating mechanism defects in the device, a safety standard may be necessary. Those units labeled as explosion-proof should be guaranteed by a standard for use in an atmosphere containing flammable gases. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30-1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage. (c) Trauma: Failure of the device's structural integrity or control mechanism could cause injury to the patient or operator. (d) Explosion: Failure of electrical shielding labeled as explosion-proof could cause an explosion in an area where flammable anesthetic gases are used.

FDA agrees with the Panel recommendation and is proposing that mobile x-ray systems be classified into class II (performance standards). The agency has reviewed the Panel recommendation and has obtained other data and information concerning this device (Refs. *52* and *53*). These data show tube housing leakage, spurious radiation when the resistance of the filament standby-temperature-limiting resistors are below 250 ohms, and the possibility of radiation being emitted at times other than during exposure due to failure of the x-ray tube grid bias. Evaluation of this device also reveals problems of (1) equipment abuse and failure related to difficult maneuvering in the clinical setting, and (2) radiation exposure because heavy shielding is inconvenient to transport (Ref. *54*). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1730; Docket No. 78N-2781; Photofluorographic x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of photofluorographic x-ray systems:

1. Identification: A photofluorographic x-ray systems is a device that includes a fluoroscopic x-ray unit and a camera intended to be used to produce, then photograph, a fluoroscopic image of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that photofluorographic x-ray systems be classified into class II (performance standards) because the Panel believes that a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device shielding. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30-1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that photofluorographic x-ray systems be classified into class II (performance standards). FDA believes a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1740; Docket No. 78N-2782; Tomographic x-ray system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of tomographic x-ray systems:

1. Identification: A tomographic x-ray system is an x-ray device intended to be used to produce radiographic images of a specific cross-sectional plane of the body by blurring or eliminating detail from other planes. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that tomographic x-ray systems be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device shielding. Electromechanical malfunction of the device will affect the quality of the image, leading to unnecessary radiation exposure to the patient from repeat procedures. A performance standard will minimize this hazard. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based

its recommendation on the Panel members' knowledge of, and clincial experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radiographic tomographic systems be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1750; Docket No. 78N–2783; Computed tomography x-ray system.

The Radiological Device Classification Panel and the Neurological Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of computed tomography x-ray systems:

1. Identification: A computed tomography x-ray system is a diagnostic x-ray system intended to produce cross-sectional images of the body by computer reconstruction of x-ray transmission data from the same axial plane taken at different angles. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Radiological Device Classification Panel recommends that establishing a performance standard for this device be a low priority. The Neurological Device Classification Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Radiological Device Classification Panel and the Neurological Device Classification Panel recommend that computed tomography x-ray systems be classified into class II because the Panels believe that a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device shielding. The Panels believe that electrical safety standards are required to minimize the hazard of electrical shock. The Neurological Device Classification Panel notes the possibility of incorrect diagnosis if the device's imaging performance is not adequate, specifically if the spatial and the density resolution characteristics are not adequate. Both Panels believe that general controls alone would not provide sufficient control over these characteristics. Both Panels believe that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Radiological Device Classification Panel and the Neurological Device Classification Panel based their recommendations on their Panel members' knowledge of, and clinical experience with, the device. In addition, expert individuals presented data and information at meetings of both Panels. The Radiological Device Classification Panel extensively discussed the effectiveness of computed body tomography (CT) and emphasized the importance of acquiring skill to interpret CT data accurately (Ref. *55*). This Panel also reviewed a policy statement of the National Academy of Sciences on this device (Ref. *56*). The Radiological Device Classification Panel and the Neurological Device Classification Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage. (c) Misdiagnosis: Poor imaging performance could lead to an incorrect diagnosis.

FDA agrees with the recommendations of the Radiological Device Classification Panel and the Neurological Device Classification Panel and is proposing that computed tomography x-ray systems be classified into class II (performance standards). The agency has concluded that the classification of this device should be published in the part of the Code of Federal Regulations for the classification of radiologic devices. FDA has also obtained data and information concerning the dose and imaging performance of the device (Refs. *57*, *58*, and *59*) in addition to that mentioned in the Panel's recommendation.

The agency believes that many of the risks to health presented by the device are controlled by the performance standards for x-ray products in §§ 1020.30–1020.32 (21 CFR 1020.30–1020.32). These performance standards were promulgated under the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b–263n). In addition, as announced in the **Federal Register** of October 31, 1980 (45 FR 72204), the Bureau of Radiological Health of FDA is proposing to amend the diagnostic x-ray performance standard (21 CFR 1020.30–1020.32) to address the special characteristics of computed tomography x-ray systems.

There are some risks presented by computed tomography x-ray systems (such as, electrical shock and risks associated with mechanically caused trauma) that are not controlled by the present performance standards. For example, FDA believes that a future supplemental standard should address excessive radiation exposure that may result when electromechanical malfunction prevents the x-ray tube from moving continuously. FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.1760; Docket No. 78N–2784; Diagnostic x-ray tube housing assembly.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of diagnostic x-ray tube housing assemblies:

1. Identification: A diagnostic x-ray tube housing assembly is an x-ray generating tube encased in a radiation-shielded housing that is intended for diagnostic purposes. This generic type of device may include high voltage and filament transformers or other appropriate components.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that diagnostic x-ray tube housing assemblies be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device shielding. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device labeling for the

x-ray tube provide information on the focal spot size and spot pinhole pictures at two settings: (1) Known voltage (kV) and low milliamperage (mA), and (2) 80 percent of maximum rating as measured by a star pattern and that inclusion of the information in the device labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30–1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel's recommendation and is proposing that diagnostic x-ray tube housing assemblies be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide this assurance.

Section 892.1770; Docket No. 78N–2785; Diagnostic x-ray tube mount.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of diagnostic x-ray tube mounts:

1. Identification: A diagnostic x-ray tube mount is a device intended to support and to position the diagnostic x-ray tube housing assembly for a medical radiographic procedure.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that diagnotic x-ray tube mounts be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that diagnostic x-ray tube mounts be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide this assurance.

Section 892.1820; Docket No. 78N–2788; Pneumoencephalographic chair.

The Radiological Device Classification Panel and the Neurological Device Classification Panel, FDA advisory committees, made the following recommendation regarding the classification of pneumoencephalographic chairs:

1. Identification: A pneumoencephalographic chair is a chair intended to be used to support and position a patient during pneumoencephalography (x-ray imaging of the brain).

2. Recommended classification: Class II (performance standards). The Panels recommend that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: Both the Radiological Device Classification Panel and the Neurological Device Classification Panel recommend that pneumoencephalographic chairs be classified into class II because the Panels believe that a performance standard will prevent physical injury of the patient from electromechanical malfunction of the device. The Neurological Device Classification Panel states that the chair must not hinder administration of radio-opaque dyes or medications. In addition, the restraint straps must not significantly affect the patient's blood circulation. Both Panels believe that electrical safety standards also are required to minimize the hazard of electrical shock. Both Panels believe that general controls alone would not provide sufficient control over these characteristics. The Radiological Device Classification Panel and the Neurological Device Classification Panel believe that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Radiological Device Classification Panel and the Neurological Device Classification Panel based their recommendations on the Panel members' knowledge of, and clinical experience with, the device. The Radiological Device Classification Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (1) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Trauma: Failure of the device's structural integrity or control mechanism could cause injury to the patient or operator. (c) Venous or arterial constriction: The restraint straps may hold the patient too tightly and constrict blood flow.

FDA agrees with the recommendations of the Radiological Device Classification Panel and the Neurological Device Classification Panel and is proposing that pneumoencephalographic chairs be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device. The agency has reviewed the recommendations of both Panels and has determined that the classification of this device should be published in the part of the Code of Federal Regulations for radiology devices.

Section 892.1830; Docket No. 78N–2789; Radiologic patient cradle.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiologic patient cradles:

1. Identification: A radiologic patient cradle is a support device intended to be used for rotational positioning about the longitudinal axis of a patient during radiologic procedures.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radiologic patient cradles be classified into

class II because the Panel believes that a standard will control the amount of absorbancy of radiation by the cradle and minimize the hazard of an unnecessarily high dosage of radiation to the patient to obtain adequate radiographs. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30–1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radiologic patient cradles be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide such assurance.

Section 892.1840; Docket No. 78N–2790; Radiographic film.

The Radiological Device Classification Panel and the Dental Device Classification Panel, FDA advisory committees, made the following recommendation regarding the classification of radiographic films:

1. Identification: Radiographic film is a thin sheet of radiotransparent material coated on one or both sides with a photographic emulsion that is intended to be used to record images during dianostic radiologic procedures.

2. Recommended classification: Class I (general controls). The Radiological Device Classification Panel and the Dental Device Classification Panel recommend that this device be exempt from registration, device listing, and premarket notification under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), records and reports under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Radiological Device Classification Panel and the Dental Device Classification Panel recommend that radiographic films be classified into class I because both Panels believe that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Radiological Device Classification Panel and the Dental Device Classification Panel recommend that this device be exempt from registration, device listing, and premarket notification under section 510 of the act because the Panels believe that FDA does not need to know who manufactures this simple device. Both Panels recommend that this device be exempt from the records and reports regulation under section 519 of the act because the Radiological Device Classification Panel and the Dental Device Classification Panel believe that, with regard to this device, the information required under this section of the act will serve no useful purpose. The Radiological Device Classification Panel recommends that this device be exempted from the good manufacturing practice regulation under section 520(f) of the act because the Panel believes that, because film manufacture requires such exacting tolerances and because poor quality film is discovered immediately, there is no need to impose added regulations which probably would only increase its cost. The Dental Device Classification Panel also recommends that this device be exempted from the good manufacturing practice regulation under section 520(f) of the act. The Panel believes that enough is known about the history of user experience to determine that the application of further regulations would not improve the safety and effectiveness of the device. The Radiological Device Classification Panel also recommends that the device's labeling provide information on the film characteristics, H and D curves, on the radiographic-intensifying screen compatibility, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panels based their recommendations on the Panel members' judgment that the device presents no significant risks to health in their extensive experience with the device. The device has been in use for many years.

5. Risks to health: None identified.

FDA agrees with the recommendations of the Panels and is proposing that radiographic films be classified into class I (general controls). FDA believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

In response to the recommendations of the Panels that manufacturers of radiographic film be exempt from section 510 of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations.

FDA disagrees with the recommendations of the Panels that manufacturers of radiographic film be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i).

In response to the recommendations of the Panels that manufacturers of radiographic film be exempt from the device GMP regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180, with respect to general requirements concerning records, and § 820.198 with respect to complaint files. See the discussion under the heading "Exemptions for Class I Devices," for a complete explanation on the agency's policies concerning exemptions.

The agency has reviewed the recommendations of the Dental Device Classification Panel and the Radiological Device Classification Panel for radiographic film and has determined that classification of this device should be published in the part of the Code of Federal Regulations for radiology devices.

Section 892.1850; Docket No. 78N–2791; Radiographic film cassette.

The Radiological Device Classification Panel and the Dental Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of radiographic film cassettes:

1. Identification: A radiographic film cassette is a device intended to be used during diagnostic x-ray procedures to hold a radiographic film in close contact with an x-ray intensifying screen and to provide a light-proof enclosure for direct exposure of radiographic film.

2. Recommended classification: The Dental Device Classification Panel recommends that the radiographic film cassette be classified into class II and that establishing a performance standard for this device be a low priority. The Radiological Device Classification Panel recommends that radiographic film cassettes be placed into class I (general controls) with no exemptions.

3. Summary of reasons for recommendation: The Radiological Device Classification Panel recommends that the radiographic film cassettes be classified into class I because the Radiological Device Classification Panel believes that general controls are sufficient to provide reasonable

assurance of the safety and effectiveness of this device. The Panel also believes that all possible defects relating to the safety and effectiveness of the device are readily detectable before use, either through visual examination by the user or through testing that is done routinely before use. However, the Radiological Device Classification Panel recommends that the device's labeling provide information on the materials used in and the thickness of the front panel or with the aluminum equivalence of the front panel, and that inclusion of this information in the labeling be voluntary. The Dental Device Classification Panel recommends that this device be classified into class II because the Panel believes that the possibility of misdiagnosis exists if the device does not provide good contact between the radiographic film and radiographic intensifying screen. If the front panel of the cassett is thicker than necessary for structural stability, the Panel notes that the patient may be subjected to unnecessary amounts of radiation to expose the film properly. The Dental Device Classification Panel believes that general controls alone would not provide sufficient control over these characteristics. The Dental Device Classification Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Radiological Device Classification Panel based its recommendation on extensive experience with the device, on the Panel members' judgment that the device presents no significant risks to health, and on the fact that the effectiveness of the device can be easily determined by the user. The Dental Device Classification Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device and on presentations at an open Panel meeting (Ref. *60*).

5. Risks to health: None identified by the Radiological Device Classification Panel. The Dental Device Classification Panel identified the following risks to health: (a) Misdiagnosis: If the device does not provide good film-screen contact, inferior images could be produced. Such poor images could lead to a loss in diagnostic information and inappropriate patient treatment. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Dental Device Classification Panel recommendation and is proposing that radiographic film cassettes be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device. The agency has reviewed the recommendations of the Panels and has obtained other data and information concerning this device. The agency believes that, given a desired minimum rigidity for the radiographic film cassette front panel, the type and thickness of the material used for the cassette front panel can affect significantly the radiation exposure necessary for a radiographic examination. This view is supported by Kelley and Trout (Ref. *61*), which discusses the measurements of the exposures necessary to produce the same radiographic density on film. These exposures were measured for several types of radiographic film cassettes under various conditions corresponding to typical radiologic practice. Recent advances in carbon fiber technology indicate that the use of these materials for the front panel of radiographic film cassettes can result in a product that has sufficient rigidity to provide good film-screen contact, and that can reduce radiographic exposures significantly. Because of these considerations and because of its concern that unnecessary radiation exposure of patients and health care personnel be minimized, FDA believes that radiographic film cassettes should be marketed with front panels as transparent to x-rays as possible, consistent with good radiographic results.

FDA is also concerned about the effects of cassettes that produce improper film-screen contact. Radiographs taken with such cassettes may have blurred images that can create difficulties in diagnosis. The agency acknowledges that, in health care facilities that conduct good quality assurance programs, poor film-screen contact is easily detected, and the cassette is removed from service. However, many health care facilities do not have effective quality assurance programs. Image degradation due to poor film-screen contact can frequently be a subtle effect and not easily visible from the resultant radiograph of patient anatomy. In addition, FDA notes that, in the experience of FDA laboratories, newly manufactured cassettes having poor film-screen contact may not be a rare occurrence.

Because of these considerations, FDA disagrees with the Radiological Device Classification Panel's recommendation and agrees with the recommendation of the Dental Device Classification Panel with respect to the classification of this device.

The agency has reviewed the recommendations of both Panels and has determined that the classification of this device should be published in the part of the Code of Federal Regulations for radiology devices.

Section 892.1860; Docket No 78N–2792; Radiographic film/cassette changer.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiographic film/cassette changers:

1. Identification: A radiographic film/cassette changer is a device intended to be used during radiologic procedures to move a radiographic film or cassette between x-ray exposures and to position it during the exposure.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radiographic film/cassette changers be classified into class II because the Panel believes that a standard will control the absorbency of radiation of the front panel of the changer and minimize the hazard of an unnecessarily high dosage of radiation to the patient to obtain adequate radiographs. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radiographic film/cassette changers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A

performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide such assurance.

Section 892.1870; Docket No. 78N-2793; Radiographic film/cassette changer programmer.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiographic film/cassette changer programmers:

1. Identification: A radiographic film/cassette changer programmer is a device intended to be used to control the operations of a film or cassette changer during serial medical radiography.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radiographic film/cassette changer programmers be classified into class II because the Panel believes that a standard will control device characteristics, particularly misalignment, that affect the quality of the image and will prevent unnecessary radiation exposure to the patient from repeat procedures. This device must properly align the cassette with the image projector. Electromechanical failure or malfunction of the operative controls could cause an unsatisfactory exposure of the film. As a result, unsatisfactory diagnostic information would be generated, and it would be necessary to repeat the procedure. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30-1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radiographic film/cassette changer programmers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide such assurance.

Section 892.1880; Docket No. 78N-2794; Wall-mounted radiographic cassette holder.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of wall-mounted radiographic cassette holders:

1. Identification: A wall-mounted radiographic cassette holder is a support intended to hold and to position radiographic cassettes for a radiographic exposure for medical use.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that wall-mounted radiographic cassette holders be classified into class II because the Panel believes that a performance standard will control the device characteristics, particularly misalignment, that affect the quality of the image and would prevent unnecessary radiation exposures to the patient from repeat procedures. This device must properly align the cassette with the image projector. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment including wall-mounted radiographic cassette holders (21 CFR 1020.30-1020.32).

5. Risks to health: Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that wall-mounted radiographic cassette holders be classified into class II (performance standards). The agency believes that many of the risks to health presented by the device are controlled by the performance standards of the Bureau of Radiological Health of FDA for wall-mounted radiographic cassette holders. However, other risks associated with the wall-mounted radiographic cassette holders are not controlled by the present performance standards. These other risks should be controlled in the future by supplemental standards. FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1890; Docket No. 78N-2795; Radiographic film illuminator.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of radiographic film illuminators:

1. Identification: A radiographic film illuminator is a device containing a visible light source covered with a translucent front that is intended to be used to view medical radiographs.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radiographic film illuminators be classified into class II because the Panel believes that electrical safety standards are required to minimize the hazard of electrical shock. The Panel recommends that when the illuminator is designed specifically for use in a flammable atmosphere, it should be conspicuously labeled. The Panel believes that general controls alone would not provide sufficient control over these charactieristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the operator. (b) Explosion: Failure of electrical sheilding could cause an explosion in an area where flammable anesthetic gases are used.

FDA agrees with the Panel recommnedation and is proposing that radiographic film illuminators be classified into class II (performance standards). The agency believes that a performance standad is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sifficient information to establish a performance standard to provide this assurance.

Section 892.1900; Docket No. 78N–2796; Automatic radiographic film processor.

The Radiological Device Classification Panel and the Dental Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of automatic radiographic film processors:

1. Identification: An automatic radiographic film processor is a device intended to be used to develop, fix, wash, and dry automatically and continuously film exposed for medical purposes.

2. Recommended classification: Class II (perfomrance standards). Both Panels recommend that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: Both the Radiological Device Classification Panel and the Dental Device Classification Panel recommend that automatic radiographic film processors be classified into class II because the Panels believe that electrical safety standards are required to minimize the hazard of electrical shock. The Panels believe that general controls alone would not provide sufficient control over this characteristic. Both Panels believe that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a standard. The Radiological Device Classification Panel also recommends that the device labeling provide information on the accuracy intemperatuer control, film transport speed, chemical replenishment rate, and degree of agitation of the device and that inclusion of this information in the device labeling be voluntary. Data show that variability of radiographs is caused more by the variability of exposure than by the film processor (Ref. *62*).

4. Summary of data on which the recommendation is based: Both the Radiological Device Classification Panel and the Dental Device Classification Panel based their recommendations on their Panel members' knowledge of, and experience with, the device. Both Panels noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the operator.

FDA agrees with the recommendations of Radiological Device Classification Panel and the Dental Device Classification Panel and is proposing that automatic radiographic film processors be classified into class II (performance standards).

FDA has also obtained other data and information concerning this device. Automatic radiographic film processors, when not properly used and maintained, have been proven to be a major cause of the production of poor quality radiographic images (Refs. *63* and *64*). When the image quality is so poor that the radiograph must be repeated, the patient receives unnecessary and potentially harmful radiation exposure. Additional unnecessary radiation exposures can occur if the x-ray machine technique factors are adjusted to compensate for a malfunctioning processor. FDA also notes that if the automatic radiographic film processor is malfunctioning, the quality of the resulting radiographic images would not be optimal (Refs. *65* and *66*), and the chance of making a correct diagnosis or of detecting an abnormal condition will be reduced. FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide this assurance. However, FDA is aware of the efforts of industry, private groups, and government to encourage quality assurance programs for the purpose of monitoring and maintaining the performance of these devices (Ref. *67*). The agency has reviewed the recommendations of both Panels for automatic radiographic film processors and has determined that the classification of this device should be published in the part of the Code of Federal Regulations for radiology devices.

Section 892.1910; Docket No. 78N–2797; Radiographic grid.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiographic grids:

1. Identification: A radiographic grid is a device consisting of alternating radiolucent and radiopaque strips that is intended to be placed between the patient and the image receptor to reduce the amount of scattered radiation reaching the image receptor.

2. Recommended classification: Class I (general controls). The Panel recommends that there be no exemptions.

3. Summary of reasons for recommendation: The Panel recommends that radiographic grids be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Panel states that excessive opacity of the grid can cause excess radiation exposure to the patient. The Panel recommends that the device's labeling provide information on the grid ratio, transmission, focal distance, and number of lines per unit length, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' judgment that the device represents a minimal risk to health. The device has been in use for many years.

5. Risks to health: Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radiographic grids be classified into class I (general controls) with no exemptions. The agency believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA recognizes that improperly aligned radiopaque strips in the radiographic grid may cause an inferior quality image. However, the agency believes that adherence to good manufacturing practice regulations should provide reasonable assurance of proper strip alignment and of consequent safety and effectiveness.

Section 892.1920; Docket No. 78N–2798; Radiographic head holder.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiographic head holders:

1. Identification: A radiographic head holder is a device intended to be used to position the patient's head during a radiographic procedure.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that radiographic head holders be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and

effectiveness of this device. The Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the act because the Panel believes that FDA does not need to know who manufactures this simple device. The Panel recommends that this device be exempt from the records and reports regulation under section 519 of the act because the Panel believes that, with regard to this device, the information required under this section of the act will serve no useful purpose. The Panel recommends that this device be exempt from the good manufacturing practice regulation under section 520(f) of the act because the Panel believes that the quality of the device is easily discernible, and that defects are readily apparent to the user.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' judgment that the device presents no significant risks to health. The device has been in use for many years.

5. Risks to health: None identified.

FDA agrees with the Panel recommendation and is proposing that radiographic head holders be classified into class I (general controls). The agency believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

In response to the Panel's recommendation that manufacturers of radiographic head holders be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations.

FDA disagrees with the Panel's recommendation that manufacturers of radiographic head holders be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i).

In response to the Panel's recommendation that manufacturers of radiographic head holders be exempt from the device GMP regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180, with respect to general requirements concerning records, and § 820.189 with respect to complaint files. See the discussion under the heading "Exemptions for Class I Devices," for a complete explanation of the agency's policies concerning exemptions.

Section 892.1930; Docket No. 78N-2799; Automatic contrast medium injector.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of automatic contrast medium injectors:

1. Identification: An automatic contrast medium injector is an electrically powered device that injects a contrast medium into body vessels at a desired rate and pressure, in a predetermined period of time, and that is intended for use in diagnostic radiologic procedures.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that automatic contrast medium injectors be classified into class II because the Panel believes that the rate of injection of the contrast medium into the patient should be controlled by a feedback circuit that automatically varies pressure to deliver the selected flow rate. When the desired volume has been delivered, the injection is terminated by a "dead-man" switch (Ref. *68*) that must be controlled to minimize potential cardiac complications. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The electrical safety standards should require the inclusion of an additional ground cable attached to the procedure table ground, an audible signal indicating the lack of a common ground, and an electrically isolated injection syringe (Ref. *68*). The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the rise and decay times and the accuracy of controls of the device, and that inclusion of this information in the labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. Dr. Melvin Judkins, a Panel member, presented the Report of the Inter-Society Commission for Heart Disease Resources (Ref. *68*), which summarized guidelines for diagnostic examinations of the cardiovascular system.

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Cardiac complications: Failure of the device's control mechanism could cause injury to the patient through excessive injection of the contrast medium.

FDA agrees with the Panel recommendation and is proposing that automatic contrast medium injectors be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide this assurance.

Section 892.1940; Docket No. 78N-2800; Radiologic quality assurance instrument.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiologic quality assurance instruments:

1. Identification: A radiologic quality assurance instrument is a device intended for medical purposes to measure a physical characteristic associated with another radiologic device.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), records and reports under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that radiologic quality assurance instruments be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the act because the Panel believes that FDA does not need to know who manufactures this simple device. The Panel recommends that this device be exempt from the records and reports regulation under section 519 of the act because the Panel believes that, with regard to this device, the information required under this section of the act will serve no useful purpose. The Panel recommends that this device be exempt from the good manufacturing practice regulation under section 520(f) of the act because the Panel believes that the quality of the device is easily discernible, and that defects are readily apparent to the user.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on extensive experience with the device and on the Panel members' judgment that the device presents no significant risks to health. The Panel noted that the device has been in use for many years.

5. Risks to health: None identified.

FDA agrees with the Panel recommendation and is proposing that radiologic quality assurance instruments be classified into class I (general controls). FDA believes that general

controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

In response to the Panel's recommendation that manufacturers of radiologic quality assurance instruments be exempt from section 510 of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations.

FDA disagrees with the Panel's recommendation that manufacturers of radiologic quality assurance instruments be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i).

In response to the Panel's recommendation that manufacturers of radiologic quality assurance instruments be exempt from the device GMP regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files. See the discussion under the heading, "Exemptions for Class I Devices," for a complete explanation of the agency's policies concerning exemptions.

Section 892.1950; Docket No. 78N-2801; Radiographic anthropomorphic phantom.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiographic anthropomorphic phantoms:

1. Identification: A radiographic anthropomorphic phantom is a device intended for medical purposes to simulate a human body for positioning radiographic equipment.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), records and reports under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that radiographic anthropomorphic phantoms be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the act because the Panel believes that FDA does not need to know who manufactures this simple device. The Panel recommends that this device be exempt from the records and reports regulation under section 519 of the act because the Panel believes that, with regard to this device, the information required under this section of the act will serve no useful purpose. The Panel recommends that this device be exempt from the good manufacturing practice regulation under section 520(f) of the act because the Panel believes that the quality of the device is easily discernible, and that defects are readily apparent to the user.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on extensive experience with the device and on the Panel members' judgment that the device presents no significant risks to health. The device has been in use for many years.

5. Risks to health: None identified.

FDA agrees with the Panel recommendation and is proposing that radiographic anthropomorphic phantoms be classified into class I (general controls). The agency believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

In response to the Panel's recommendation that manufacturers of radiographic anthropomorphic phantoms be exempt from section 510 of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations.

FDA disagrees with the Panel's recommendation that manufacturers of radiographic anthropomorphic phantoms be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i).

In response to the Panel's recommendation that manufacturers of radiographic anthropomorphic phantoms be exempt from the device GMP regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files. See the discussion under the heading, "Exemptions for Class I Devices," for a complete explanation of the agency's policies concerning exemptions.

Section 892.1960; Docket No. 78N-2802; Radiographic intensifying screen.

The Radiological Device Classification Panel and the Dental Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of radiographic intensifying screens:

1. Identification: A radiographic intensifying screen is a device that is a thin radiolucent sheet coated with a luminescent material that transforms incident x-ray photons into visible light and that is intended to be used to expose medical radiographic film.

2. Recommended classification: Class I (general controls). The Radiological Device Classification Panel recommends that there be no exemptions. The Dental Device Classification Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: Both the Radiological Device Classification Panel and the Dental Device Classification Panel recommend that radiographic intensifying screens be classified into class I because the Panels believe that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Dental Device Classification Panel recommends that this device be exempt from registration, device listing, and premarket notification under section 510 of the act because the Dental Device Classification Panel believes that FDA does not need to know who manufactures this simple device. The Dental Device Classification Panel recommends that this device be exempt from the records and reports regulation under section 519 of the act because the Panel believes that, with regard to this device, information required under this section of the act will serve no useful purpose. The Dental Device Classification Panel recommends that this device be exempt from the good manufacturing practice regualtion under section 520(f) of the act because the Panel believes that enough is known about the reliability of current manufacturing practices and history of user experience to determine that the application of the good manufacturing practice regulation will not improve the safety and effectiveness of the device.

4. Summary of data on which the recommendation is based: Both the Radiological Device Classification Panel and the Dental Device Classification Panel based their recommendation on extensive experience with the device and on their Panel members' judgment that the device presents no significant risks to health. The device has been in use for many years.

5. Risks to health: None identified.

FDA agrees with the Radiological Device Classification Panel recommendation and is proposing that radiographic intensifying screens be classified into class I (general controls) with no exemptions. The agency believes that general controls are

sufficient to provide reasonable assurance of the safety and effectiveness of the device.

FDA disagrees with the Dental Panel's recommendation that manufacturers of radiographic intensifying screens be exempt from all requirements under section 510 of the act (21 U.S.C. 360).

FDA disagrees with the Dental Panel's recommendation that manufacturers of radiographic intensifying screens be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i).

FDA disagrees with the Dental Panel's recommendation that manufacturers of radiographic intensifying screens be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. See the discussion in the preamble under the heading "Exemptions for Class I Devices," for a complete explanation of the agency's policies concerning exemptions.

FDA has reviewed the recommendations of the Radiological Device Classification Panel and of the Dental Device Classification Panel for radiograpic intensifying screens and has determined that the classification of this device should be published in the part of the Code of Federal Regulations for radiology devices.

Section 892.1970; Docket No. 78N-2803; Radiographic ECG/respiratior synchronizer.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of radiographic ECG/respirator synchronizers:

1. Identification: A radiographic ECG/respirator synchronizer is a device intended to be used to coordinate an x-ray film exposure with the signal from an electrocardiograph (ECG) or respirator at a predetermined phase of the cardiac or respiratory cycle.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that radiographic ECG/respirator synchronizers be classified into class II because the Panel believes that a performance standard will control the device's characteristics, particularly the sensing current, that affect the quality of the image. Only the appropriate cardiac or respiratory signal should trigger the x-ray camera. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that radiographic ECG/respirator sychronizers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.1980; Docket No. 78N-2804; Radiologic table.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiologic tables:

1. Identification: A radiologic table is a device intended for medical purposes to support a patient during radiologic procedures. The table may be fixed or tilting and may be electrically powered.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radiologic tables be classified into class II because the Panel believes that a standard will control the absorption of radiation by the table top and will minimize the hazard of an unnecessarily high dosage of radiation to obtain adequate radiographs. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated performance standards for diagnostic x-ray equipment (21 CFR 1020.30—1020.32), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70-1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper materials in the table top can result in patient exposure to excessive radiation that may cause tissue damage. (c) Trauma: Failure of the device's control mechanism could cause injury to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that radiologic tables be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide this assurance.

Section 892.5050; Docket No. 78N-2806; Medical charged-particle radiation therapy system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recomendation regarding the classification of medical charged-particle radiation therapy systems:

1. Identification: A medical charged-particle radiation therapy system is a device that produces by acceleration high energy charged particles (e.g., electrons and protons) that are intended for use in radiation therapy. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that medical charged-particle radiation therapy systems be classified into class II (performance standards) because the Panel believes that a performance standard will minimize the hazard of unintended radiation from an inaccurately directed or limited radiation beam or leakage of radiation caused by faulty construction of the device's shielding. A performance standard is necessary to establish controls on the delivery of appropriate doses of radiation to a selected part of the body to ensure the

desired therapeutic effect. The Panel also believes that the interlocks, monitors, colliminators, and field-defining light must be precisely controlled. Furthermore, because physical injury (trauma) to the patient or operator can result from structural or operating mechanism defects in the device, a safety standard may be necessary. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the accuracy of the radiation monitor and accuracy of the timer (if any), the temperature and pressure dependence of the monitor, and the uniformity of the beam output in all usable positions, and that the inclusion of this informataion in the device labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). The Panel considered the reports and standards of the National Council on Radiation Protection and Measurement (NCRP).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage. (c) Trauma: Failure of the device's control mechanism could cause injury to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that medical charged-particle radiation therapy systems be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to contol the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectivenes of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

FDA has reviewed the Panel's recommendations and has obtained other data and information which further support the classification of this generic type of device into class II. A series of four reports published by the Department of Health and Human Services on the use of medical charged-particle radiation therapy systems present an overview of the physical characteristics of the device (Ref. *69*), describe its market and use characteristics (Ref. *70*), accident history (Ref. *71*), and current regulations, standards, and guidelines (Ref. *72*).

Section 892.5300; Docket No. 78N–2810; Medical neutron radiation therapy system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of medical neutron radiation therapy systems:

1. Identification: A medical neutron radiation therapy system is a device that is intended to generate high-energy neutrons for radiation therapy. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that medical neutron radiation therapy systems be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device's shielding or from an inaccurately limited radiation beam. A standard is necessary to establish controls on the delivery of appropriate doses of radiation to a selected part of the body to ensure the desired therapeutic effect. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that medical neutron radiation therapy systems be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide this assurance.

Section 892.5650; Docket No. 78N–2813; Manual radionuclide applicator system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of manual radionuclide applicator systems:

1. Identification: A manual radionuclide applicator system is a manually operated device intended to be used to apply a radionuclide source into the body or to the surface of the body for radiation therapy. This generic type of device may include patient and equipment supports, component parts, treatment planning computer programs, and accessories.

2. Recommended classification: Class I (general controls). The Panel recommends that there be no exemptions.

3. Summary of reasons for recommendation: The Panel recommends that manual radionuclide applicator systems be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' extensive experience with the device, and on their judgment that the device presents no significant risks to health. The device has been in use for many years.

5. Risks to health: None identified.

FDA agrees with the Panel recommendation and is proposing that manual radionuclide applicator systems be classified into class I (general controls) with no exemptions. The agency believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

Section 892.5700; Docket No. 78N–2814; Remote controlled radionuclide applicator system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of remote controlled radionuclide applicator systems:

1. Identification: A remote controlled radionuclide applicator system is an electromechanical or pneumatic device that is intended to enable an operator to apply, by remote control, a radionuclide source into the body or to the surface of the body for

radiation therapy. This generic type of device may include patient and equipment supports, component parts, treatment planning computer programs and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that remote controlled radionuclide applicator systems be classified into class II because the Panel believes a standard will minimize the hazard of unintended radiation from misapplication of the radionuclide source caused by electromechanical or pneumatic failure. A standard is necessary to establish controls on the delivery of proper doses of radiation to a selected part of the body to ensure the desired therapeutic effect. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). Also, the Panel noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the remote control could result in electrical shock to the patient or the operator. (b) Excessive radiation: Improper function of this device can result in patient or operator exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that the remote controlled radionuclide applicator system be classified into class II (performance standards). The agency has reviewed the Panel recommendation and obtained other data and information concerning this device. The remote controlled radionuclide applicator system permits the physician to insert a radionuclide source into the body of a patient from a shielded location (Ref. *73*). This use of the device, called afterloading, can minimize the radiation exposure from a radionuclide source to health care personnel. A conference was held in 1971 to present and to discuss the status of afterloading in the treatment of cancer, with special consideration given to radiation protection and control factors (Ref. *74*). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard to provide this assurance.

Section 892.5710; Docket No. 78N–2815; Radiation therapy beam-shaping block.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiation therapy beam-shaping blocks:

1. Identification: A radiation therapy beam-shaping block is a device, made of a highly attenuating material (such as lead), that is intended for use in radiation therapy to modify the shape of a beam from a radiation therapy source.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radiation therapy beam-shaping blocks be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation caused by nonuniform attenuation of the isotope beam. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device.

5. Risks to health: Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radiation therapy beam-shaping blocks be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.5730; Docket No. 78N–2817; Radionuclide brachytherapy source.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radionuclide brachytherapy sources:

1. Identification: A radionuclide brachytherapy source is a device intended for medical purposes that consists of a radionuclide which may be enclosed in a sealed container made of gold, titanium, stainless steel, or platinum and intended to be placed onto a body surface or into a body cavity or tissue as a source of nuclear radiation for therapy.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radionuclide brachytherapy sources be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended leakage of radiation caused by faulty material and construction of the device. The Panel states that encapsulating materials should be biocompatible, and that the presently used encapsulating materials, such as gold, titanium, or platinum, do not cause significant adverse tissue reaction. Although this device is implanted temporarily, the Panel believes that classification into class III is unnecessary. The device has been in use for a relatively long time, and the hazard of faulty construction of the sealed container is considered unlikely. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of applicability to licensing of the product material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55). The Panel also noted that this device has been in use for many years. The Panel maintained that when the inert metals gold, titanium, or platinum, are used to encapsulate the radioactive source for implanting, the danger of adverse tissue reaction is not significant (Ref. *75*). In some cases, radiotherapy using a small source in a

suitable container can localize and control the dose of radioactive materials more accurately than radiotherapy from an external beam. As a result, damage to healthy tissue can be prevented (Ref. *76*). The Panel notes that the Department of Health and Human Services published reports on the hazards of radium and radium substitutes in the treatment of cancer (Ref. *77*).

5. Risks to health: (a) Excessive radiation: Faulty construction of the sealed container of this device can result in patient exposure to excessive radiation that may cause tissue damage. (b) Toxicity: Adverse tissue reaction may result from the encapsulating material.

FDA agrees with the Panel recommendation and is proposing that radionuclide brachytherapy sources be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide this assurance. Because a radionuclide brachytherapy source is used for radiation therapy for periods of less than 30 days and because FDA has determined that the device need not be considered an implant to protect human health, this device is not considered an implant as the term is defined in the classification procedures regulation, § 860.3(d) (21 CFR 860.3(d)).

Section 892.5740; Docket No. 78N–2818; Radionuclide teletherapy source.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of radionuclide teletherapy sources:

1. Identification: A radionuclide teletherapy source is a device consisting of a radionuclide enclosed in a sealed container. The device is intended to be used for radiation therapy, with the radiation source located at a distance from the patient's body.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radionuclide teletherapy sources be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation leakage caused by faulty material and construction of the device. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operator's licenses (10 CFR Part 55).

5. Risks to health: Excessive radiation: Faulty construction of the sealed container of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radionuclide teletherapy sources be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.5750; Docket No. 78N–2819; Radionuclide radiation therapy system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radionuclide radiation therapy systems:

1. Identification: A radionuclide radiation therapy system is a device intended to permit an operator to administer gamma radiation therapy, with the radiation source located at a distance from the patient's body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts (including beam-limiting devices), and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radionuclide radiation therapy systems be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation from misapplication of therapeutic radiation caused by failure of the shutter. The Panel believes that electrical safety standards are also required to minimize the hazard of electric shock. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel recommends that the device's labeling identify the radionuclide used in the device and the date that the device is installed for use and that inclusion of this information in the device labeling be voluntary.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). The Panel also noted that the Nuclear Regulatory Commission has promulgated standards for protection against radiation (10 CFR Part 20), rules of general applicability to licensing of byproduct material (10 CFR Part 30), regulations for licenses of radiography and radiation safety requirements for radiographic operations (10 CFR Part 34), regulations for human uses of byproduct material (10 CFR Part 35), and regulations for operators' licenses (10 CFR Part 55).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that radionuclide radiation therapy systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.5770; Docket No. 78N–2820; Powered radiation therapy patient support assembly.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of powered radiation therapy patient support assemblies:

1. Identification: A powered radiation therapy patient support assembly is an electrically powered adjustable couch intended to be used to support a patient during radiation therapy.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that

powered radiation therapy patient support assemblies be classified into class II because the Panel believes that this device must effectively support and control the position of a patient during therapy. Furthermore, because physical injury (trauma) to the patient or operator can result from structural or operating mechanism defects in the device, a safety standard may be necessary. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Trauma: Failure of the device's structural integrity or control mechanism could cause injury to the patient or operator.

FDA agrees with the Panel recommendation and is proposing that powered radiation therapy patient support assemblies be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.5780; Docket No. 78N–2821; Light beam patient position indicator.

The Radiological Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of light beam patient position indicators:

1. Identification: A light beam patient position indicator is a device that projects a beam of light (incoherent light or laser) to determine the alignment of the patient with a radiation beam. The beam of light is intended to be used during radiologic procedures to ensure proper positioning of the patient and to monitor alignment of the radiation beam with the patient's anatomy.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that light beam patient position indicators be classified into class II because the Panel believes that the intensity of the light beam must be controlled to be safe. A light beam that is too intense can cause injury to a patient's eyes, and a laser light that is too intense also can cause burns to the patient. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel noted that the Bureau of Radiological Health of FDA has promulgated a laser performance standard (21 CFR 1040.10), and that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Burn: Faulty design, manufacture, or performance of the device could result in a skin or retinal burn.

FDA Agrees with the Panel recommendation and is proposing that light beam patient position indicators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard for this device.

Section 892.5840; Docket No. 78N–2822; Radiation therapy simulation system.

The radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of radiation therapy simulation systems:

1. Identification: A radiation therapy simulation system is a fluoroscopic or radiographic X-ray system intended for use in localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field produced. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that radiation therapy simulation systems be classified into class II because the Panel believes that a performance standard will minimize the hazard of unintended radiation resulting from an inaccurately directed or limited radiation beam. A performance standard is necessary to establish controls to ensure that treatment plans developed using a simulator deliver appropriate doses of radiation to a selected part of the body to ensure the desired therapeutic effect. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel member's knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage or insufficient radiation.

FDA agrees with the Panel recommendation and is proposing that radiation therapy simulation systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.5900; Docket No. 78N–2823; X-ray radiation therapy system.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of x-ray radiation therapy systems:

1. Identification: An x-ray radiation therapy system is a device intended to produce and control x-rays used for radiation therapy. This generic type of device may include signal analysis and display equipment, patient and equipment supports,

treatment planning computer programs, component parts, and accessories.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that x-ray radiation therapy systems be classified into class II (performance standards) because the Panel believes that a performance standard will minimize the hazard of unintended radiation from an inaccurately directed or limited radiation beam or from leakage of radiation caused by faulty construction of the device's shielding. A performance standard is necessary to establish controls on the delivery of appropriate doses of radiation to a selected part of the body to ensure the desired therapeutic effect. A performance standard is required to control proper calibration of the device. Miscalibration can cause administration of unnecessarily high radiation levels. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). The Panel also considered the reports and standards issued by the National Council on Radiation Protection and Measurements (NCRP).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in exposure of the patient or the operator to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that x-ray radiation therapy systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Section 892.5930; Docket No. 78N–2826; Therapeutic x-ray tube housing assembly.

The Radiological Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of therapeutic x-ray tube housing assemblies:

1. Identification: A therapeutic x-ray tube housing assembly is an x-ray generating tube encased in a radiation-shielded housing, intended for use in radiation therapy. This generic type of device may include high voltage and filament transformers or other appropriate components when contained in radiation-shielded housing.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that therapeutic x-ray tube housing assemblies be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation leakage caused by faulty construction of the device's shielding. The Panel believes that electrical safety standards also are required to minimize the hazard of electrical shock. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' knowledge of, and clinical experience with, the device. The Panel noted that the Occupational Safety and Health Administration has promulgated electrical safety standards for electrically powered equipment (NFPA 70–1971). The Panel also considered the reports and standards issued by the National Council for Radiation Protection and Measurement (NCRP). The NCRP has made specific recommendations regarding how to control leakage of radiation from these x-ray tube housings (NCRP Report 33).

5. Risks to health: (a) Electrical shock: Faulty design, manufacture, or performance of the device could result in an electrical shock to the patient or operator. (b) Excessive radiation: Improper function of this device can result in patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Panel recommendation and is proposing that therapeutic x-ray tube housing assemblies be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard to provide this assurance.

Section 892.6500; Docket No. 78N–2827; Personnel protective shield.

The Radiological Device Classification Panel and the Dental Device Classification Panel, FDA advisory committees, made the following recommendations regarding the classification of personnel protective shields:

1. Identification: A personnel protective shield is a device intended to be used to protect the patient, the operator, or other persons from unnecessary exposure to radiation during radiological procedures by providing an attenuating barrier to radiation. This generic type of device may include articles of clothing, furniture, and movable or stationary structures.

2. Recommended classification: Class II (performance standards). The Radiological Device Classification Panel recommends that establishing a performance standard for this device be a low priority. The Dental Device Classification Panel recommends that this device be placed in class I, and that it be exempt from the good manufacturing practice regulation under section 520(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Radiological Device Classification Panel recommends that personnel protective shields be classified into class II because the Panel believes that a standard will minimize the hazard of unintended radiation caused by faulty construction or inappropriate shielding material. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish a performance standard. The Panel also recommends that the device's labeling provide information on the lead equivalent of the device shielding, and that the inclusion of the information in the labeling be voluntary. The Dental Device Classification Panel recommends that personnel protective shields be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of this device. The Dental Panel recommends that this device be exempt from the good manufacturing practice regulation under section 520(f) of the act because the Panel believes that the quality of the device is easily discernible, and that defects are readily apparent to the user.

4. Summary of data on which the recommendation is based: The Radiological Device Classification Panel and the Dental Device Classification Panel based their recommendations on their Panel members' knowledge of, and clinical experience with, the device.

5. Risks to health: Excessive radiation: Improper function of this device can result in

patient exposure to excessive radiation that may cause tissue damage.

FDA agrees with the Radiological Device Classification Panel recommendation and is proposing that personnel protective shields be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard will provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard for this device.

FDA disagrees with the Dental Device Classification Panel recommendation that personnel protective shields be classified into class I (general controls). The agency believes that general controls alone are not sufficient to control the risks to health inherent in improperly manufactured shielding. FDA disagrees with the Panel recommendation that manufacturers of personnel protective shields be exempt from the good manufacturing practice regulation under section 520(f) of the act. The agency believes that compliance with this regulation is necessary to ensure the quality of this device and thus its safety, effectiveness, and compliance with adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of personnel protective shields having defects that could cause harm to users.

The agency has reviewed the recommendations of the Radiological Device Classification Panel and the Dental Device Classification Panel for personnel protective shields and has determined that the classification of this device should be published in the part of the Code of Federal Regulations or radiology devices.

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The following information has been placed in the Dockets Management Branch, Food and Drug Administration, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

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(19) Minutes of the Biologic Effects of Ultrasound Subcommittee on the OB–GYN Device Classification Panel (2d Meeting), October 28, 1976.

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Environmental Impact

The agency has determined under 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, the agency has concluded that neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 892 to read as follows:

PART 892—RADIOLOGY DEVICES

Subpart A—General Provisions

Sec.

892.1 Scope.

Subpart B—Radiology Diagnostic Devices

892.1100 Scintillation (gamma) camera.

Sec.
892.1110 Positron camera.
892.1130 Nuclear whole body counter.
892.1170 Bone densitometer.
892.1200 Emission computed tomography system.
892.1220 Fluorescent scanner.
892.1240 Radionuclide generator.
892.1300 Nuclear rectilinear scanner.
892.1310 Nuclear tomography system.
892.1320 Nuclear uptake probe.
892.1330 Nuclear whole body scanner.
892.1350 Nuclear scanning bed.
892.1360 Radionuclide dose calibrator.
892.1370 Nuclear anthropomorphic phantom.
892.1380 Nuclear flood source phantom.
892.1390 Radionuclide rebreathing system.
892.1400 Nuclear sealed calibration source.
892.1410 Nuclear electrocardiograph synchronizer.
892.1420 Radionuclide test pattern phantom.
892.1450 Telethermographic system.
892.1480 Liquid crystal thermographic system.
892.1540 Nonfetal ultrasonic monitor.
892.1550 Ultrasonic pulsed doppler imaging system.
892.1560 Ultrasonic pulsed echo imaging system.
892.1570 Diagnostic ultrasonic transducer.
892.1600 Angiographic x-ray system.
892.1610 Diagnostic x-ray beam-limiting device.
892.1620 Cine or spot fluorographic x-ray camera.
892.1630 Electrostatic x-ray imaging system.
892.1640 Radiographic film marking x-ray system.
892.1650 Image-intensified fluoroscopic x-ray system.
892.1660 Non-image-intensified fluoroscopic x-ray system.
892.1670 Spot-film device.
892.1680 Stationary x-ray system.
892.1700 Diagnostic x-ray high voltage generator.
892.1710 Mammographic x-ray system.
892.1720 Mobile x-ray system.
892.1730 Photofluorographic x-ray system.
892.1740 Tomographic x-ray system.
892.1750 Computed tomography x-ray system.
892.1760 Diagnostic x-ray tube housing assembly.
892.1770 Diagnostic x-ray tube mount.
892.1820 Pneumoencephalographic chair.
892.1830 Radiologic patient cradle.
892.1840 Radiographic film.
892.1850 Radiographic film cassette.
892.1860 Radiographic film/cassette changer.
892.1870 Radiographic film/cassette changer programmer.
892.1880 Wall-mounted radiographic cassette holder.
892.1890 Radiographic film illuminator.
892.1900 Automatic radiographic film processor.
892.1910 Radiographic grid.
892.1920 Radiographic head holder.
892.1930 Automatic contrast medium injector.
892.1940 Radiologic quality assurance instrument.
892.1950 Radiographic anthropomorphic phantom.
Sec.
892.1960 Radiographic intensifying screen.
892.1970 Radiographic ECG/respirator synchronizer.
892.1980 Radiologic table.

Subpart C-E [Reserved]

Subpart F—Radiology Therapeutic Devices

892.5050 Medical charged-particle radiation therapy system.
892.5300 Medical neutron radiation therapy system.
892.5650 Manual radionuclide applicator system.
892.5700 Remote controlled radionuclide applicator system.
892.5710 Radiation therapy beam-shaping block.
892.5730 Radionuclide brachytherapy source.
892.5740 Radionuclide teletherapy source
892.5750 Radionuclide radiation therapy system.
892.5770 Powered radiation therapy patient support assembly.
892.5780 Light beam patient position indicator.
892.5840 Radiation therapy simulation system.
892.5900 X-ray radiation therapy system.
892.5930 Therapeutic x-ray tube housing assembly.

Subpart G—Radiology Miscellaneous Devices

892.6500 Personnel protective shield.

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)).

Subpart A—General Provisions

§ 892.1 Scope.

(a) This part sets forth the classification of radiology devices intended for human use.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provision of a regulation in this part but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a radiology device that has two or more types of uses (e.g., use both as a diagnostic device and a therapeutic device) is listed in the subpart representing one use of the device.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of this Title 21, unless otherwise noted.

Subpart B—Radiology Diagnostic Devices

§ 892.1100 Scintillation (gamma) camera.

(a) *Identification.* A scintillation (gamma) camera is a device intended to be used to image the distribution of radionuclides in the body by means of a photon radiation detector. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1110 Positron camera.

(a) *Identification.* A positron camera is a device intended to be used to image the distribution of positron-emitting radionuclides in the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class II (performance standards)

§ 892.1130 Nuclear whole body counter.

(a) *Identification.* A nuclear whole body counter is a device intended to be used to measure amounts of radionuclides in the entire body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1170 Bone densitometer.

(a) *Identification.* A bone densitometer is a device intended to be used for medical purpose to measure bone density and mineral content by x-ray or gamma ray transmission measurements through the bone and adjacent tissues. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1200 Emission computed tomography system.

(a) *Identification.* An emission computed tomography system is a device that is intended to detect the location and distribution of gamma ray- and positron-emitting radionuclides in the body and produce cross-sectional images through computer reconstruction of the data. This generic type of device may include signal analysis and display equipment, patient and equipment

supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class II (performance standards)

§ 892.1220 Fluorescent scanner.

(a) *Identification.* A fluorescent scanner is a device intended to be used to measure the induced fluorescent radiation in the body by exposing the body to certain x-rays or low-energy gamma rays. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1240 Radionuclide generator.

(a) *Identification.* A radionuclide generator is a device intended to be used for medical purposes to produce and accumulate a desired, relatively short-lived, radionuclide (daughter) by the decay of a stored longer-lived parent radionuclide. The radionuclides are generally contained in a shielded container. The device may include the shielding, piping, and fittings used to aid in the chemical separation (usually be elution) of the daughter from the parent radionuclide.

(b) *Classification.* Class II (performance standards).

§ 892.1300 Nuclear rectilinear scanner.

(a) *Identification.* A nuclear rectilinear scanner is a device intended to be used to image the distribution of radionuclides in the body by means of a detector or detectors whose position moves in two directions with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1310 Nuclear tomography system.

(a) *Identification.* A nuclear tomography system is a device that is intended to detect nuclear radiation in the body and produce images of a specific cross-sectional plane of the body by blurring or eliminating detail from other planes. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1320 Nuclear uptake probe.

(a) *Identification.* A nuclear uptake probe is a device intended to be used to measure the amount of radionuclide taken up by a particular organ or body region. This generic type of device may include a single or multiple detector probe, signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1330 Nuclear whole body scanner.

(a) *Identification.* A nuclear whole body scanner is a device intended to be used to measure and image the distribution of radionuclides in the body by means of a wide-aperture detector whose position moves in one direction with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1350 Nuclear scanning bed.

(a) *Identification.* A nuclear scanning bed is an adjustable bed intended to be used to support a patient during a nuclear medicine procedure.

(b) *Classification.* Class II (performance standards).

§ 892.1360 Radionuclide dose calibrator.

(a) *Identification.* A radionuclide dose calibrator is a radiation detection device intended to be used to assay radionuclides before their administration to patients.

(b) *Classification.* Class II (performance standards).

§ 892.1370 Nuclear anthropomorphic phantom.

(a) *Identification.* A nuclear anthropomorphic phantom is a human tissue facsimile that contains a radioactive source or a cavity in which a radioactive sample can be inserted. It is intended to be used to calibrate nuclear uptake probes or other medical instruments.

(b) *Classification.* Class II (performance standards).

§ 892.1380 Nuclear flood source phantom.

(a) *Identification.* A nuclear flood source phantom is a radiolucent container filled with a uniformly distributed solution of a desired radionuclide. It is intended to be used to calibrate a medical gamma camera/collimator system for uniformity of response.

(b) *Classification.* Class II (performance standards).

§ 892.1390 Radionuclide rebreathing system.

(a) *Identification.* A radionuclide rebreathing system is a device intended to be used to contain a gaseous or volatile radionuclide or a radionuclide-labeled aerosol and permit it to be respired by the patient during nuclear medicine ventilatory tests (testing process of exchange between the lungs and the atmosphere). This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1400 Nuclear sealed calibration source.

(a) *Identification.* A nuclear sealed calibration source is an encapsulated reference radionuclide intended to be used for calibration of medical nuclear radiation detectors.

(b) *Classification.* Class II (performance standards).

§ 892.1410 Nuclear electrocardiograph synchronizer.

(a) *Identification.* A nuclear electrocardiograph synchronizer is a device intended for use in nuclear radiology to relate the time of image formation to the cardiac cycle during the production of dynamic cardiac images.

(b) *Classification.* Class II (performance standards).

§ 892.1420 Radionuclide test pattern phantom.

(a) *Identification.* A radionuclide test pattern phantom is a device that consists of an arrangement of radiopaque or radioactive material sealed in a solid pattern that is intended to serve as a test for a performance characteristic of a nuclear medicine imaging device.

(b) *Classification.* Class II (performance standards).

§ 892.1450 Telethermographic system.

(a) *Telethermographic system intended for adjunctive use in diagnostic screening for detection of breast cancer*—(1) *Identification.* A telethermographic system intended for use as an adjunct to physical palpation or mammography in diagnostic screening for detection of breast cancer is a device with a detector that is intended to measure, without touching the patient's skin, the self-emanating infrared radiation that reveals the temperature variations of the surface of

the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(2) *Classification.* Class II (performance standards).

(b) *Telethermographic system intended for use alone in diagnostic screening for detection of breast cancer*—(1) *Identification.* A telethermographic system for use alone in diagnostic screening for detection of breast cancer is a device with a detector that is intended to measure, without touching the patient's skin, the self-emanating infrared radiation that reveals the temperature variations of the surface of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(2) *Classification.* Class III (premarket approval).

§ 892.1480 Liquid crystal thermographic system.

(a) *A nonelectrically powered liquid crystal thermographic system intended for adjunctive use in diagnostic screening for detection of breast cancer, or other uses*—(1) *Identification.* A nonpowered liquid crystal thermographic system intended for use as an adjunct to physical palpation or mammography in diagnostic screening for detection of breast cancer, or for other uses, is a nonelectrically powered device applied to the skin that displays the color patterns of heat sensitive cholesteric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

(2) *Classification.* Class I (general controls).

(b) *An AC-powered liquid crystal thermographic system intended for adjunctive use in diagnostic screening for detection of breast cancer, or other uses*—(1) *Identification.* An AC-powered liquid crystal thermographic system intended for use as an adjunct to physical palpation or mammography in diagnostic screening for detection of breast cancer, or for other uses, is an AC-powered device applied to the skin that displays the color patterns of heat sensitive cholesteric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include image display and recording equipment, patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

(2) *Classification.* Class II (performance standards).

(c) *A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for use alone in diagnostic screening for detection of breast cancer*—(1) *Identification.* A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for use alone in diagnostic screening for detection of breast cancer is a nonelectrically powered or an AC-powered device applied to the skin that displays the color patterns of heat sensitive cholesteric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include image display and recording equipment, patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

(2) *Classification.* Class III (premarket approval).

§ 892.1540 Nonfetal ultrasonic monitor.

(a) *Identification.* A nonfetal ultrasonic monitor is a device that projects a continuous high-frequency sound wave into body tissue other than a fetus to determine frequency changes (doppler shift) in the reflected wave and is intended to be used in the investigation of nonfetal blood flow and of other nonfetal body tissues in motion. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1550 Ultrasonic pulsed doppler imaging system.

(a) *Identification.* An ultrasonic pulsed doppler imaging system is a device that combines the features of continuous wave doppler-effect technology with pulsed-echo effect technology and is intended to be used to determine stationary body tissue characteristics such as depth or location of tissue interfaces or dynamic tissue characteristics such as velocity of blood or tissue motion. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1560 Ultrasonic pulsed echo imaging system.

(a) *Identification.* An ultrasonic pulsed echo imaging system is a device that is intended to project a pulsed sound beam into body tissue to determine the depth or location of the tissue interfaces and to measure the duration of an acoustic pulse from the transmitter to the tissue interface and back to the receiver. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§892.1570 Diagnostic ultrasonic transducer.

(a) *Identification.* A diagnostic ultrasonic transducer is a device made of a piezoelectric material that converts electrical signals into acoustic signals and acoustic signals into electrical signals. It is intended for use in diagnostic medical ultrasonic devices. Accessories for this generic type of device include transmission media for acoustically coupling the transducer to the body surface such as, acoustic gel, paste, or a flexible fluid container.

(b) *Classification.* Class II (performance standards).

§ 892.1600 Angiographic x-ray system.

(a) *Identification.* An angiographic x-ray system is a device intended for radiologic visualization of the heart, blood vessels, or lymphatic system during or after injection of a contrast medium. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1610 Diagnostic x-ray beam-limiting device.

(a) *Identification.* A diagnostic x-ray beam-limiting device is a device such as a collimator, a cone, or an aperture that is intended to restrict the dimensions of a diagnostic x-ray field by limiting the size of the primary x-ray beam.

(b) *Classification.* Class II (performance standards).

§ 892.1620 Cine or spot fluorographic x-ray camera.

(a) *Identification.* A cine or spot fluorographic x-ray camera is a device intended to photograph diagnostic images produced by x-rays with an image intensifier.

(b) *Classification.* Class II (performance standards).

§ 892.1630 Electrostatic x-ray imaging system.

(a) *Identification.* An electrostatic x-ray imaging system is a device intended for medical purposes that uses an electrostatic field across a semiconductive plate, a gas-filled chamber, or other similar device to convert a pattern of x-radiation into an electrostatic image and, subsequently, into a visible image. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1640 Radiographic film marking x-ray system.

(a) *Identification.* A radiographic film marking x-ray system is a device intended for medical purposes to add identification and other information onto radiographic film by means of x-ray exposure.

(b) *Classification.* Class II (performance standards).

§ 892.1650 Image-intensified fluoroscopic x-ray system.

(a) *Identification.* An image-intensified fluoroscopic x-ray system is a device intended to visualize anatomical structures by converting a pattern of x-radiation into a visible image through electronic amplification. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1660 Non-image-intensified fluoroscopic x-ray system.

(a) *Identification.* A non-image-intensified fluoroscopic x-ray system is a device intended to be used to visualize anatomical structures by using a fluorescent screen to convert a pattern of x-radiation into a visible image. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1670 Spot-film device.

(a) *Identification.* A spot-film device is an electromechanical component of a fluoroscopic x-ray system that is intended to be used for medical purposes to position a radiographic film cassette to obtain radiographs during fluoroscopy.

(b) *Classification.* Class II (performance standards).

§ 892.1680 Stationary x-ray system.

(a) *Identification.* A stationary x-ray system is a permanently installed diagnostic system intended to generate and control x-rays for examination of various anatomical regions. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1700 Diagnostic x-ray high voltage generator.

(a) *Identification.* A diagnostic x-ray high voltage generator is a device that is intended to supply and control the electrical energy applied to a diagnostic x-ray tube for medical purposes. This generic type of device may include a converter that changes alternating current to direct current, filament transformers for the x-ray tube, high voltage switches, electrical protective devices, or other appropriate elements.

(b) *Classification.* Class II (performance standards).

§ 892.1710 Mammographic x-ray system.

(a) *Identification.* A mammographic x-ray system is a device intended to be used to produce radiographs of the breast. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1720 Mobile x-ray system.

(a) *Identification.* A mobile x-ray system is a transportable device system intended to be used to generate and control x-rays for diagnostic procedures. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1730 Photofluorographic x-ray system.

(a) *Identification.* A photofluorographic x-ray system is a device that includes a fluoroscopic x-ray unit and a camera intended to be used to produce, then photograph, a fluoroscopic image of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1740 Tomograghic x-ray system.

(a) *Identification.* A tomographic x-ray system is an x-ray device intended to be used to produce radiologic images of a specific cross-sectional plane of the body by blurring or eliminating detail from other planes. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1750 Computed tomography x-ray system.

(a) *Identification.* A computed tomography x-ray system is a diagnostic x-ray system intended to produce cross-sectional images of the body by computer reconstruction of x-ray transmission data from the same axial plane taken at different angles. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.1760 Diagnostic x-ray tube housing assembly.

(a) *Identification.* A diagnostic x-ray tube housing assembly is an x-ray generating tube encased in a radiation-shielded housing that is intended for diagnostic purposes. This generic type of device may include high voltage and filament transformers or other appropriate components.

(b) *Classification.* Class II (performance standards).

§ 892.1770 Diagnostic x-ray tube mount.

(a) *Identification.* A diagnostic x-ray tube mount is a device intended to support and to position the diagnostic x-ray tube housing assembly for a medical radiographic procedure.

(b) *Classification.* Class II (performance standards).

§ 892.1820 Pneumoencephalographic chair.

(a) *Identification.* A pneumoencephalographic chair is a chair intended to be used to support and position a patient during pneumoencephalography (x-ray imaging of the brain).

(b) *Classification.* Class II (performance standards).

§ 892.1830 Radiologic patient cradle.

(a) *Identification.* A radiologic patient cradle is a support device intended to be used for rotational positioning about the longitudinal axis of a patient during radiologic procedures.

(b) *Classification.* Class II (performance standards).

§ 892.1840 Radiographic film.

(a) *Identification.* Radiographic film is a thin sheet of radiotransparent material coated on one or both sides with a photographic emulsion that is intended to be used to record images during diagnostic radiologic procedures.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 892.1850 Radiographic film cassette.

(a) *Identification.* A radiographic film cassette is a device intended to be used during diagnostic x-ray procedures to hold a radiographic film in close contact with an x-ray intensifying screen and to provide a light-proof enclosure for direct exposure of radiographic film.

(b) *Classification.* Class II (performance standards).

§ 892.1860 Radiographic film/cassette changer.

(a) *Identification.* A radiographic film/cassette changer is a device intended to be used during a radiologic procedure to move a radiographic film or cassette between x-ray exposures and to position it during the exposure.

(b) *Classification.* Class II (performance standards).

§ 892.1870 Radiographic film/cassette changer programmer.

(a) *Identification.* A radiographic film/cassette changer programmer is a device intended to be used to control the operations of a film or cassette changer during serial medical radiography.

(b) *Classification.* Class II (performance standards).

§ 892.1880 Wall-mounted radiographic cassette holder.

(a) *Identification.* A wall-mounted radiographic cassette holder is a support intended to hold and to position radiographic cassettes for a radiographic exposure for medical use.

(b) *Classification.* Class II (performance standards).

§ 892.1890 Radiographic film illuminator.

(a) *Identification.* A radiographic film illuminator is a device containing a visible light source covered with a translucent front that is intended to be used to view medical radiographs.

(b) *Classification.* Class II (performance standards).

§ 892.1900 Automatic radiographic film processor.

(a) *Identification.* An automatic radiographic film processor is a device intended to be used to develop, fix, wash, and dry automatically and continuously film exposed for medical purposes.

(b) *Classification.* Class II (performance standards).

§ 892.1910 Radiographic grid.

(a) *Identification.* A radiographic grid is a device consisting of alternating radiolucent and radiopaque strips that is intended to be placed between the patient and the image receptor to reduce the amount of scattered radiation reaching the image receptor.

(b) *Classification.* Class I (general controls).

§ 892.1920 Radiographic head holder.

(a) *Identification.* A radiographic head holder is a device intended to be used to position the patient's head during a radiographic procedure.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 892.1930 Automatic contrast medium injector.

(a) *Identification.* An automatic contrast medium injector is an electrically powered device that injects a contrast medium into body vessels at a desired rate and pressure, in a predetermined period of time, and that is intended for use in diagnostic radiologic procedures.

(b) *Classification.* Class II (preformance standards).

§ 892.1940 Radiologic quality assurance instrument.

(a) *Identification.* A radiologic quality assurance instrument is a device intended for medical purposes to measure a physical characteristic associated with another radiologic device.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 892.1950 Radiographic anthropomorphic phantom.

(a) *Identification.* A radiographic anthropomorphic phantom is a device intended for medical purposes to stimulate a human body for positioning radiographic equipment.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 892.1960 Radiographic intensifying screen.

(a) *Identification.* A radiographic intensifying screen is a device that is a thin radiolucent sheet coated with a luminescent material that transforms incident x-ray photons into visible light and that is intended to be used to expose medical radiographic film.

(b) *Classification.* Class I (general controls).

§ 892.1970 Radiographic ECG/respirator synchronizer.

(a) *Identification.* A radiographic ECG/respirator synchronizer is a device intended to be used to coordinate an x-ray film exposure with the signal from an electrocardiograph (ECG) or respirator at a predetermined phase of the cardiac or respiratory cycle.

(b) *Classification.* Class II (performance standards).

§ 892.1980 Radiologic table.

(a) *Identification.* A radiologic table is a device intended for medical purposes to support a patient during radiologic procedures. The table may be fixed or tilting and may be electrically powered.

(b) *Classification.* Class II (performance standards).

Subparts C–E—[Reserved]

Subpart F—Radiology Therapeutic Devices

§ 892.5050 Medical charged-particle radiation therapy system.

(a) *Identification.* A medical charged-particle radiation therapy system is a device that produces by acceleration high energy charged particles (e.g., electrons and protons) that are intended for use in radiation therapy. This generic type of device may include signal analysis and display equipment, patient

and equipment supports, treatment planning computer programs, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.5300 Medical neutron radiation therapy system.

(a) *Identification.* A medical neutron radiation therapy system is a device that is intended to generate high-energy neutrons for radiation therapy. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.5650 Manual radionuclide applicator system.

(a) *Identification.* A manual radionuclide applicator system is a manually operated device intended to be used to apply a radionuclide source into the body or to the surface of the body for radiation therapy. This generic type of device may include patient and equipment supports, component parts, treatment planning computer programs, and accessories.

(b) *Classification.* Class I (general controls).

§ 892.5700 Remote controlled radionuclide applicator system.

(a) *Identification.* A remote controlled radionuclide applicator system is an electromechanical or pneumatic device that is intended to enable an operator to apply, by remote control, a radionuclide source into the body or to the surface of the body for radiation therapy. This generic type of device may include patient and equipment supports, component parts, treatment planning computer programs and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.5710 Radiation therapy beam-shaping block.

(a) *Identification.* A radiation therapy beam-shaping block is a device, made of a highly attenuating material (such as lead), that is intended for use in radiation therapy to modify the shape of a beam from a radiation therapy source.

(b) *Classification.* Class II (performance standards).

§ 892.5730 Radionuclide brachytherapy source.

(a) *Identification.* A radionuclide brachytherapy source is a device intended for medical purposes that consists of a radionuclide which may be enclosed in a sealed container made of gold, titanium, stainless steel, or platinum and intended to be placed onto a body surface or into a body cavity or tissue as a source of nuclear radiation for therapy.

(b) *Classification.* Class II (performance standards).

§ 892.5740 Radionuclide teletherapy source.

(a) *Identification.* A radionuclide teletherapy source is a device consisting of a radionuclide enclosed in a sealed container. The device is intended to be used for radiation therapy, with the radiation source located at a distance from the patient's body.

(b) *Classification.* Class II (performance standards).

§ 892.5750 Radionuclide radiation therapy system.

(a) *Identification.* A radionuclide radiation therapy system is a device intended to permit an operator to administer gamma radiation therapy, with the radiation source located at a distance from the patient's body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts (including beam-limiting devices), and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.5770 Powered radiation therapy patient support assembly.

(a) *Identification.* A powered radiation therapy patient support assembly is an electrically powered adjustable couch intended to be used to support a patient during radiation therapy.

(b) *Classification.* Class II (performance standards).

§ 892.5780 Light beam patient position indicator.

(a) *Identification.* A light beam patient position indicator is a device that projects a beam of light (incoherent light or laser) to determine the alignment of the patient with a radiation beam. The beam of light is intended to be used during radiologic procedures to ensure proper positioning of the patient and to monitor alignment of the radiation beam with the patient's anatomy.

(b) *Classification.* Class II (performance standards).

§ 892.5840 Radiation therapy simulation system.

(a) *Identification.* A radiation therapy simulation system is a fluoroscopic or radiographic x-ray system intended for use in localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field produced. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.5900 X-ray radiation therapy system.

(a) An x-ray radiation therapy system is a device intended to produce and control x-rays used for radiation therapy. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

(b) *Classification.* Class II (performance standards).

§ 892.5930 Therapeutic x-ray tube housing assembly.

(a) *Identification.* A therapeutic x-ray tube housing assembly is an x-ray generating tube encased in a radiation-shielded housing, intended for use in radation therapy. This generic type of device may include high voltage and filament transformers or other appropriate components when contained in radiation-shielded housing.

(b) *Classification.* Class II (performance standards).

Subpart G—Radiology Miscellaneous Devices

§ 892.6500 Personnel protective shield.

(a) *Identification.* A personnel protective shield is a device intended to be used to protect the patient, the operator, or other persons from unnecessary exposure to radiation during radiologic procedures by providing an attenuating barrier to radiation. This generic type of device may include articles of clothing, furniture, and movable or stationary structures.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 30, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments regarding the general provisions are to be identified with the docket number found in brackets in the heading of this document. Comments regarding a particular device are to be identified with the docket number for that device found in the "Panel

Recommendations and FDA's Proposed Classifications" section. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has carefully analyzed the economic effects of this proposed rule and has determined that, if promulgated, the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that this proposal does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules proposing classification of devices into class I generally maintain the status quo: These devices are now subject to only the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and, under the proposed rules, would remain subject only to such controls either in their entirety or with certain exemptions. Devices classified into class II would also remain subject only to the general controls provisions of the act unless and until an applicable performance standard were established. Similarly, devices classified into class III remain subject only to the general controls provisions of the act until an additional regulation is promulgated pursuant to section 515(b) of the act (21 U.S.C. 360e(b)) requiring that such devices have in effect approved applications for premarket approval. In accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), devices classified by regulation into class III may remain in commercial distribution without an approved premarket approval application for 30 months following the effective date of classification of the device into class III, or for 90 days following the promulgation of a regulation under section 515(b) of the act (21 U.S.C. 360e(b)), whichever occurs later. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

Dated: December 16, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-1681 Filed 1-28-82; 8:45 am]

BILLING CODE 4160-01-M

federal register

Friday
January 29, 1982

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alaska: AK81–5136	July 24, 1981.
Hawaii: HI81–5153	Sept. 25, 1981.
Illinois: IL81–2004	Mar. 13, 1981.
Indiana: IL81–2004	Mar. 13, 1981.
Kentucky: IL81–2004	Mar. 13, 1981.
Missouri: IL81–2004	Mar. 13, 1981.
Montana:	
MT81–5138	Aug. 7, 1981.
MT81–5140	Aug. 7, 1981.
Nevada: NV81–5152	Sept. 18, 1981.
New Jersey:	
NJ81–3053	Oct. 9, 1981.
NJ81–3063	Dec. 28, 1981.
Ohio: IL81–2004	Mar. 13, 1981.
Oregon: OR81–5127	July 6, 1981.
Pennsylvania:	
PA80–3071	Oct. 24, 1980.
PA80–3074	Dec. 12, 1980.
PA81–3029	July 10, 1981.
PA81–3043	July 17, 1981.
PA81–3044	Aug. 7, 1981.
PA81–3091	Dec. 28, 1981.
Rhode Island: RI81–3042	Aug. 21, 1981.
Texas: TX81–4036	June 5, 1981.
Virginia:	
VA81–3085	Nov. 27, 1981.
VA81–3084	Nov. 27, 1981.
VA81–3083	Nov. 6, 1981.
Texas: TX81–4083	Nov. 6, 1981.
West Virginia: IL81–2004	Mar. 13, 1981.
Wyoming: WY81–5108	Apr. 3, 1981.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Illinois: IL80–2061 (IL82–2002)	Aug. 15, 1980.
Texas:	
TX81–4030 (TX82–4001)	May 8, 1981.
TX81–4077 (TX82–4005)	Oct. 2, 1981.
Nebraska: NE81–4026 (NE82–4004)	Apr. 17, 1981.

Signed at Washington, D.C., this 22nd day of January 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510–27–M

DECISION AK81-5136 - Mod. #1
(46 FR 38243 - July 24, 1981)
Statewide, Alaska

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Boilermakers	$23.47	.78	1.45	1.00	.10
Bricklayers; Blocklayers; Stonemasons	20.02	1.34	3.80		
CARPENTERS:					
Area 1:					
Carpenters	21.93	.90	2.75		.15
Power actuated tool operator; Dewalt or similar type saw operator; Marlite and acoustical; Fire or floor repair work applicators; Nailing machine operator; Saw filer	22.38	.90	2.75		.15
Millwrights	22.54	.90	2.75		.15
Areas 2 and 3:					
Carpenter	20.85	.90	2.50		.35
Acoustical and marlite applicators; Floor workers; Radial arm saw operators; Fire and floor workers	21.28	.90	2.50		.35
Millwrights	21.45	.90	2.50		.35
CULINARY WORKERS:					
Working Camp Manager; Head Cook; Baker; Cook-Baker	18.20	.60	3.00		.04
Cook	17.20	.60	3.00		.04
ELECTRICIANS:					
Electricians; Technicians	22.15	1.65	3%+4.00		.25
Cable Splicers	23.90	1.65	3%+4.00		.25
Residential Electricians:					
Wireman	12.50	1.50	3%+1.00		.10
ELEVATOR CONSTRUCTORS	24.16	1.345	1.085	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.345	1.085	a	.035
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				

DECISION AK81-5136 - Mod. #1 (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS:					
Area 1	$18.95	1.10	1.00		.20
LINE CONSTRUCTION:					
Groundman	21.15	1.65	3%+3.00		.25
Equipment operators; Linemen; Technicians	23.15	1.65	3%+3.00		.25
Cable Splicers	24.90	1.65	3%+3.00		.25
Powderman	21.15	1.65	3%+3.00		.25
IRONWORKERS:					
Bender operator; Bridge; Fence Erector; Machinery mover; Ornamental; Reinforcing; Sheeter; Structural	22.00	1.60	3.00		.30
SHEET METAL WORKERS:					
Residential construction:					
Areas 2 and 3	16.16	1.01	2.47		.22
SOFT FLOOR LAYERS:					
Areas 2 and 3	20.80	1.10	1.50	4%	.25
TERRAZZO WORKERS	20.02	1.34	3.80		
TILE SETTERS	19.29	1.34	3.80		
LABORERS:					
Building, Heavy & Highway Construction					
Group 1	17.20	1.55	3.25		.20
Group 2	17.48	1.55	3.25		.20
Group 3	17.81	1.55	3.25		.20
Group 4	18.03	1.55	3.25		.20
Group 5	18.25	1.55	3.25		.20
Group 6	18.49	1.55	3.25		.20

Modification Page 3

DECISION NO. HI81-5153 - Mod #4 (46 FR 47394 - Sept. 25, 1981) Statewide Hawaii	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Painters:					
Brush	$14.05	.84	3.00	1.00	.10
Tapers	14.30	.84	3.00	1.00	.10
Spray; Sandblaster	14.55	.84	3.00	1.00	.10
Roofers	13.30	1.25	1.80	.85	.15
DECISION NO. IL81-2004 MOD. #1 (46 FR 16818 - March 13, 1981) Illinois, Indiana, Kentucky, Missouri, Ohio & West Virginia					
Change:					
Area IV					
Within the geographical jurisidiction of the St. Paul District, Corps of Engineers					
Levermen, Engineer, Mechanic and Boatman	$13.66	1.50	1.35		
Oiler	11.32	1.50	1.35		
Area V					
Within the geographical jurisdiction of the Rock Island District, Corps of Engineers					
Levermen, Engineer, Mechanic, and Boatmar	13.66	1.50	1.35		
Oiler	11.32	1.50	1.35		
Area VI					
Within the geographical jurisdiction of the Chicago District, Corps of Engineers					
Levermen, Engineer, Mechanic, and Boat-man	13.66	1.50	1.35		
Oiler	11.32	1.50	1.35		

Modification Page 4

DECISION NO. MT81-5138 - Mod. #3 (46 FR 40439 - August 7, 1981) Statewide, Montana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians:					
Area 7:					
Electricians	$17.61	.70	3%+.50		1/2%
Cable Splicers	18.49	.70	3%+.50		1/2%
Area 8:					
Electricians	14.05	.70	3%+.50		1/2%
Cable Splicers	14.75	.70	3%+.50		1/2%
Area 9:					
Electricians	13.85	.70	3%+.50		1/2%
Cable Splicers	14.54	.70	3%+.50		1/2%
Plumbers:					
Area 4	17.60	1.00	1.10		.20
Omit:					
Cement Masons:					
Cement Masons	10.88	.85	.40		
Grinder, Bush Hammer and Chipping Fan preparing finished surface; Epoxy	11.03	.85	.40		
Add:					
Cement Masons:					
Cement Masons	11.83	.85	.55		
Grinder, Bush Hammer and Chipping Fan preparing finished surface	11.98	.85	.55		
Epoxy	12.13	.85	.55		
DECISION NO. MT81-5140 - Mod. #3 (46 FR 40467 - August 7, 1981) Cascade, Deer Lodge, Gallatin, Glacier, Hill, Missoula, Silver Bow and Valley Counties, Montana					
Change:					
Asbestos Workers Bricklayers; Marble Masons:	$18.84	.78	$1.45		.04
Area 1	15.45	.85	1.00		

DECISION NO. MT81-5140 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cement Masons:					
Area 2:					
Cement Masons	$13.75	$1.00	$ .50		
Grinder, Bush Hammer and Chipping Gun, preparing finished surface; Epoxy	14.10	1.00	.50		
Electricians:					
Area 4:					
Electricians	17.61	.70	3%+.50		1/2%
Cable Splicers	18.49	.70	3%+.50		1/2%
Area 5:					
Electricians	14.05	.70	3%+.50		1/2%
Cable Splicers	14.75	.70	3%+.50		1/2%
Plasterers:					
Area 1	13.75	1.00	.50		
Roofers:					
Area 4	13.50	.55			
Terrazzo and Tile Setters:					
Area 2	14.45	1.00	.85		

DECISION NO. NV81-5152 - Mod. #2

(46 FR 46505-September 18, 1981)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway Construction Douglas County), Nevada					
Change:					
Brick Hod Carriers:					
Area 1	$13.51	$1.15	$1.35		.10
Bricklayers; Stonemasons:					
Area 1	16.59	1.10	.70		.06
Area 2	16.32	1.16	.75		.04
Carpenters:					
Area 2:					
Carpenters	14.80	1.33	1.93	1.30	.11
Drywall Installers	15.05	1.33	1.93	1.30	.11
Floor Layers; Patent Scaffold Erectors; Power Saw Operator; Shingler	14.95	1.33	1.93	1.30	.11
Millwrights	15.40	1.33	1.93	1.30	.11
Piledrivermen	15.05	1.33	1.93	1.30	.11
Cement Masons:					
Area 2:					
Cement Masons	13.80	1.33	1.27	2.00	.10
Mastic, Magnesite and all Composition Masons	14.05	1.33	1.27	2.00	.10
Troweling Machine; Grinder Operator and Kelly Float	14.30	1.33	1.27	2.00	.10
Area 3:					
Cement Masons	15.55	1.33	1.27	2.00	.10
Mastic, Magnesite and all Composition Masons	15.80	1.33	1.27	2.00	.10
Troweling Machine; Grinder Operator and Kelly Float	16.05	1.33	1.27	2.00	.10
Electricians:					
Area 1:					
Electricians; Technicians	19.56	1.41	3%+2.80		.08
Cable Splicers	19.89	1.41	3%+2.80		.08

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DECISION NO. NV81-5152 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Area 2:					
Electricians; Technicians	$20.73	$1.09	3%+2.09		.14
Cable Splicers	22.80	1.09	3%+2.09		.14
Area 3:					
Electricians; Technicians	22.23	1.09	3%+2.09		.14
Cable Splicers	24.30	1.09	3%+2.09		.14
Elevator Constructors:					
Area 1:					
Elevator Constructors	18.67	1.345	1.085	a	.035
Helpers	13.07	1.345	1.085	a	.035
Probationary Helpers	9.335				
Laborers:					
Remaining Counties:					
Group 1	12.36	1.15	1.35		.10
Group 2	12.46	1.15	1.35		.10
Group 3	12.61	1.15	1.35		.10
Group 4	12.86	1.15	1.35		.10
Group 5	13.16	1.15	1.35		.10
Group 6-A	13.16	1.15	1.35		.10
Group 6-B	12.86	1.15	1.35		.10
Group 6-C	12.51	1.15	1.35		.10
Line Construction Workers:					
Area 2:					
Groundman	15.55	1.09	3%+2.09		
Line Equipment Operators	18.66	1.09	3%+2.09		
Lineman; Technician	20.73	1.09	3%+2.09		
Cable Splicers	22.80	1.09	3%+2.09		
Area 3:					
Groundman	17.05	1.09	3%+2.09		
Line Equipment Operators	20.16	1.09	3%+2.09		
Lineman; Technicians	22.23	1.09	3%+2.09		
Cable Splicers	24.30	1.09	3%+2.09		
Marble Setters:					
Area 1	16.59	1.10	.70		.06
Area 2	15.04	1.16	.75		.01
Marble, Terrazzo and Tile Finishers:					
Area 1	12.90	1.10	.70		
Area 2	8.83	1.16	.75		.01

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DECISION NO. NV81-5152 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Area 2:					
Brush and Roller	$16.79	$ .84	$ .75		.02
Spray; Taper; Paperhangers; Sandblaster	17.29	.84	.75		.02
Spray-swing stage, up to 40 ft.; Spray-steel	17.54	.84	.75		.02
Brush-swing stage, up to 40 ft.; Brush-steel	17.04	.84	.75		.02
Plasterers:					
Area 2	14.72	1.33	1.50		.05
Plumbers; Steamfitters:					
Area 2	18.24	1.23	1.25	2.10	.20
Plumbers (Utility):					
Area 1	18.24	1.23	1.25	2.10	.20
Sheet Metal Workers:					
Area 2	16.57	1.30	2.36	1.66	.14
Terrazzo Workers; Tile Setters:					
Area 1	16.59	1.10	.70		.06
Area 2	15.04	1.16	.75		.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. NJ81-3053 - MOD. #4 (46 FR 50243 - October 9, 1981) BERGEN, ESSEX, HUDSON, HUNTERDON, MIDDLESEX, MORRIS, PASSAIC, SOMERSET SUSSEX, UNION AND WARREN COUNTIES, NEW JERSEY					
CHANGE:					
LABORERS, BUILDING CONSTRUCTION					
ZONE 15					
Laborers	10.05	.85	.85		.10
ZONE 4					
Laborers	10.45	.80	.50		.10
DECISION NO. NJ81-3063 - MOD. #1 (46 FR 62746 - December 28, 1981) ATLANTIC, BURLINGTON, CAMDEN, CAPE MAY, CUMBERLAND, GLOUCESTER, MERCER, MONMOUTH, OCEAN AND SALEM COUNTIES, NEW JERSEY					
CHANGE:					
CARPENTERS, MILLWRIGHTS AND INSULATORS:					
ZONE 5					
Carpenters & Insulators	14.75	8%	7%		5/10%
Millwrights	15.00	8%	7%		5/10%
ZONE 6					
Carpenters & Insulators	14.75	8%	7%		5/10%
Millwrights	15.00	8%	7%		5/10%
GLAZIERS:					
Monmouth & Ocean Cos.	15.90	.91	3.00		.05
LABORERS, BUILDING CONSTRUCTION:					
ZONE 1					
Gunnite men and gun nozzle operators for gunnite and asbestos sandblasting	10.40	.65	.95		.07

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. NJ81-3063 - (CONT'D)					
LABORERS, BUILDING CONSTRUCTION: (Cont)					
ZONE 3					
Laborers	10.40	.60	75		.10
Hod carriers, mason tenders, operators of jackhammers, tampers and electric hammers	10.65	.60	.75		.10
ZONE 6					
Laborers	10.15	.40	1.00		.10
Hod carriers and plasterers tenders	10.25	.40	1.00		.10
BRICKLAYERS, STONEMASONS, MARBLE MASON, CEMENT MASONS PLASTERERS, TILE LAYERS AND TERRAZZO WORKERS:					
ZONE 1					
Bricklayers, Cement Masons, Marble Masons, Plasterers, Stonemasons, Tile Layers and Terrazzo Workers	13.40	.75	2.00		.04
DECISION NO. OR81-5127 - Mod #8 (46 FR 35019 - July 6, 1981) Statewide Oregon					
CHANGE:					
ELECTRICIANS:					
Area 4:					
Electricians	$22.00	1.25	3% + 1.00		.17
Cable Splicers	24.20	1.25	3% + 1.00		.17
Area 5:					
Electricians	20.80	1.25	3% + 2.25		.13
Cable Splicers	21.60	1.25	3% + 2.25		.13
Area 6:					
Electricians	18.72	1.25	3% + 2.00		.17
Cable Splicers	20.59	1.25	3% + 2.00		.17

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA80-3071					
MOD. NO. 4					
(45 FR 70699 - October 24, 1980)					
Allegheny County, Pennsylvania					
CHANGE:					
Electricians:					
Residential 4 stories walk-up or with elevator	$15.95	1.75	3%+1.00		.10
Residential (single or two family houses walk-up garden type apartments up to and including 4 stories	10.12	.55	3%	.25	
DECISION NO. PA80-3074					
MOD. NO. 11					
(45 FR 81981 - December 12, 1980)					
Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania					
CHANGE:					
Carpenters & Soft floor layers	12.65	6½%	8%	10%	
Electricians					
Zone I	15.95	1.75	3%+1.00		.10
Line Construction					
Zone I					
Lineman	16.93	.60	3%		3/8%
Groundman	10.15	.60	3%		3/8%
Winch truck op.	11.85	..60	3%		3/8%
Zone III					
Lineman	14.23	.60	3%		3/8%
Winch truck op.	9.96	.60	3%		3/8%
Groundman	8.54	.60	3%		3/8%
Sheet metal workers					
Zone II	13.51	1.17	2.17		.23

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA81-3029					
MOD. NO. 4					
(46 FR 35891 - July 10, 1981)					
Blair County, Pennsylvania					
CHANGE:					
Carpenters	$12.65	6½%	8%	10%	
Electricians	15.95	1.75	3%+1.00		.10
Sheet metal workers	13.51	1.17	2.17		.23
DECISION NO. PA81-3043					
MOD. NO. 5					
(46 FR 37212 - July 17, 1981)					
Armstrong, Allegheny, Beaver, Butler, Fayette, Indiana, Washington & Westmoreland Counties, Pennsylvania					
CHANGE:					
Electricians:					
Zone I	15.95	1.75	3%+1.00		.10
Zone III	16.10	3½%	3%+1.30		1/2%
DECISION NO. PA81-3044					
MOD. NO. 8					
(46 FR 40477 - August 7, 1981)					
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford & Venango Counties, Pennsylvania					
CHANGE:					
Electricians:					
Zone I	15.95	1.75	3%+1.00		.10
Zone IV	16.10	3½%	3%+1.30		½%

DECISION NO. PA81-3091 MOD. NO. 1 (46 FR 62761 - December 28, 1981) Greene, Somerset & Potter Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Carpenters:					
Somerset & Potter Counties	$12.65	6½%	8%	10%	
Electricians:					
Greene & Somerset Counties	15.95	1.75	3%+1.00		.10
Line Construction:					
Greene & Somerset Counties:					
Linemen	16.93	.60	3%		3/8%
Groundman	10.15	.60	3%		3/8%
Winch truck op.	11.85	.60	3%		3/8%
DECISION NO. RI81-3042 - Mod. #3 (46 FR 42615 August 21 1981) Statewide, Rhode Island					
CHANGE:					
BUILDING CONSTRUCTION					
BOILERMAKERS	16.53	1.275	10%		.04
CARPENTERS					
Statewide					
Carpenters	13.00	.90	2.00		.05
Millwrights	13.25	.90	2.00		.05

DECISION NO. TX81-4036 - MOD. #3 (46 FR 30286 - June 5,1981) Lubbock County, Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Asbestos workers	$13.60	.80	1.55		.02
Carpenters	12.20	.48	.80		.01
Painters:					
Brush	10.45				
Spray; sandblaster	11.20				
Sheet metal workers	14.72	.55	.72		.12
Decision No. VA81-3085 - Mod. #1 (46 FR 58029 - Nov. 27, 1981) York County & the Cities of Hampton & Newport News (including Langley AFB, Fort Eustis and Fort Monroe), Virginia					
CHANGE					
Sprinkler Fitters	$12.60	.95	1.40		.05
Decision No. VA81-3084 Mod. #1 (46 FR 58031 - Nov. 27, 1981) Henrico County & the Independent City of Richmond, Virginia					
CHANGE					
Sprinkler Fitters	12.60	.95	1.40		.05
Plumbers & Steamfitters	13.25	.80	.90		.05
Decision No. VA81-3083 Mod. #2 (46 FR 55217 - Nov. 6, 1981) The Cities of Chesapeake, Portsmouth & Virginia Beach, Virginia					
CHANGE					
Sprinkler Fitters	12.60	.95	1.40		.05

DECISION NO. TX81-4083 - MOD. #5
(46 FR 55213 - November 6, 1981)
Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Zone 1 - Group 1	$14.02	.65	1.15		.20
Group 2	13.62	.65	1.15		.20

POWER EQUIPMENT OPS. (ZONE 1) CLASSIFICATIONS DEFINITIONS

GROUP 1 - Heavy duty mechanic; Asphalt mixer op. on job; Blade grader, self-propelled; Bull clam; Backfiller, Bulldozer & all cat type tractors; Backhoe; Concrete mixer, over 14 cu. ft.; Crusher Op. on job; Concrete batch plant op.; Clam shell; Cranes (all types) truck mounted or crawler requires oiler including groves (hydraulic) or similar type over 12½ ton capacity; Escalated rate on crane & derricks booms: .01¢ per hour, per ft., over 90 ft. including jib; Draglines, Derricks, power operated (all types); DW-10 caterpillar, S-8 euclid & similar tractors; Elevating grader, self-propelled; Foundation drilling machines (all); Forklifts, used in handling machinery on construction; Gradall; Hoist, motor driven, 2 drums or more; Locomotive crane; Mixmobile; Paving mixers (all types); Pile drivers; Pumpcrete machines; Pneumatic roller, self-propelled; Shovels, power operated; Scraper, over 3 cu. yds.; Scoopmobiles; Trenching machines, all types; Winch trucks, when poles and winch is used; Water well drilling machines, used on construction; Well point pumps; Welding machines (7 to 13 machines)

GROUP 2 - Air compressors, water pumps, welding machines (2 to 6 machines), generators; Blade grader, towed; Flex plane; Form grader; Concrete mixers, less than 14 cu. ft. Pulsometer; Wagon drill op.; Conveyor; Hoist, single drum; Scraper, 3 cu. yds. or less; Bobcat with loader

ADD:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sound Installers - repair, service & installation of intercommunication telephone interconnect, sound & public address equipment, electronic systems, music & television distributing systems for commercial buildings & shall include the pulling of all wires in conduit or raceways or surface wiring, the running of open wires, the running of conduit & raceways not to exceed 10 ft. in length & the wiring of all electrical communication devises of 100 volts or less controlling the equipment described above	$10.42	.54	3%	c	

DECISION NO. TX81-4083 MOD. # 5 (CONT'D)

FOOTNOTES FOR SOUND INSTALLERS

c - Sick or Injury Pay:
1st day out - no pay
2nd day out - 1/2 pay
3rd day out & thereafter - full pay for a maximum of 10 days pay per year of the Contract
Employees who receive pay for less than 5 sick days per year shall receive on Aug. 31 of each year incentive pay equal in amount to a day's pay for each day that such days were less than 5.

Employees who are members of a reserve component of the Armed Services & are ordered to annual active duty for training as a normal part of their reserve obiligation shall be eligible for & shall receive differential pay equal to the difference between their computed daily base rate (excluding overtime compensation) & their daily military base pay (excluding quarter & subsistence allowances) for each day of military leave where the employee would normally have performed work up to a maximum of 10 work days per year,

Employees absent from work while serving as jurors shall be paid at their hourly rate excluding overtime for the hours actually lost from work less any amount received by the employee as juror's fee.

Up to 3 days paid leave for death of immediate family member (spouse, child, parent, brother, sister, mother-in-law, father-in-law, grandparents & grandchildren)

Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, the last working day preceding Christmas Day, Christmas Day & another day to be designated by the Company.

Paid Vacation:
after 1 year service - 1 week vacation
after 2 years service - 2 weeks vacation
after 5 years service - 2 years & 1 day vacation
after 6 years service - 2 years & 2 days vacation
after 7 years service - 2 years & 3 days vacation
after 8 years service - 2 years & 4 days vacation
after 9 years service - 3 weeks vacation

DECISION NO. WY81-5108 - Mod. #8
(46 FR 20477 - April 3, 1981)
Converse, Goshen, Laramie, Natrona, Niobrara, and Platte Counties, Wyoming

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters:					
Carpenters	$12.75	.85	.75	.75	.22
Piledrivermen	13.00	.85	.75	.75	.22
Ironworkers:					
Structural, Ornamental, Reinforcing	14.15	1.05	1.60		.15

SUPERSEDEAS DECISION

STATE: ILLINOIS COUNTY: WINNEBAGO
DECISION NO.: IL82-2002 DATE: Date of Publication
Supersedes Decision No.: IL80-2061, dated August 15, 1980 in 45 FR 54611
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS; Blocklayers	$14.43	.90	1.30		.01
CARPENTERS; Drywall Hangers	13.26	.90	1.47	.76	.10
CEMENT MASONS	11.78	.55	1.00		
ELECTRICIANS	8.45	.55	3%+.80		½%
LABORERS	12.45	.65	1.15		.05
PAINTERS	13.95	.90	1.00		.02
PLUMBERS; Steamfitters	16.66	.75	1.10		.10
ROOFERS	16.17	.90			.03
SHEET METAL WORKERS	15.20	.90	1.72		.09

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler
DECISION NO. : TX82-4001 DATE: Date of Publication
Supersedes Decision No. TX81-4030, dated May 8, 1981 in 46 FR 25984
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories). (Use current heavy & highway general wage determination for paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.60	.80	1.55		.02
BOILERMAKERS	14.80	1.275	1.00		.04
BRICKLAYERS & STONEMASONS	13.55		.80		
CARPENTERS:					
ZONE 1 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter Randall, Roberts, Sherman Swisher & Wheeler Cos.:					
Carpenters	13.45		.60		.01
Millwrights	13.80		.60		.01
ZONE 2 - Childress Co.:					
Carpenters	12.90	.53	.90		.10
Millwrights	13.40	.53	.90		.10
CEMENT MASONS	12.70				
ELECTRICIANS:					
ZONE 1 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos.:					
Electricians	13.98	.60	3%+.50		1/2%
Cable splicers	15.38	.60	3%+.50		1/2%
ZONE 2 - Childress Co.:					
Electricians	13.10	.60	3%		1/10%
Cable splicers	13.35	.60	3%		1/10%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS	$ 7.90			a	
IRONWORKERS:					
ZONE 1 - Armstrong, Carson, Castro, Childress (excluding southeastern 1/4) Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos.	13.00	.80	1.65		.10
ZONE 2 - Childress Co. (southeastern 1/4)	12.425	.55	1.70		.10
LABORERS:					
GROUP 1 - General or construction laborers	7.52	.63	.40		
GROUP 2 - Air or electric tool ops., jackhammers, vibrator tampers, chipping hammers, pipe wrappers, asphalt rakers, sand blasterers, riprap stone pavers, cutting torch op. (demolition), mortar mixer (hand or machine), mason tenders, plasterer tenders, hod carriers, loader & placer, chuck tenders, timberman, collapsible form setters, concrete buggy ops.; carpenter tenders, pipe layers: main, sewer and drainage; make-up man, powderman & blasters; gunite ops. or concrete operators	7.67	.63	.40		
LATHERS	15.15				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
ZONE 1 - Childress Co.:					
Lineman; operators	$13.10	.60	3%		1/2%
Cable splicers	13.35	.60	3%		1/2%
Groundman	70%JR	.60	3%		1/2%
ZONE 2 - Armstrong, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos.:					
Linemen	13.98	.60	3%+.50		1/2%
Cable splicers	15.38	.60	3%+.50		1/2%
Groundmen	9.24	.60	3%+.50		1/2%
Operator-hole digger, line truck	10.75	.60	3%+.50		1/2%
Flat bed truck driver	8.11	.60	3%+.50		1/2%
MARBLE MASONS (EXTERIOR)	13.55		.80		
PAINTERS:					
GROUP 1 - Brush & roller; paperhangers; perfa-taper	9.95		.50		
GROUP 2 - Structural steel; swinging stage or chair below 50 ft.	10.07		.50		
GROUP 3 - Spray & sandblasters	10.70		.50		
GROUP 4 - Perfa-tape mach.	10.20		.50		
PLASTERERS	15.15				.01
PLUMBERS & PIPEFITTERS	14.10	.50	.75	1.06	
ROOFERS	8.00				
SHEET METAL WORKERS	14.72	.55	.72		.12
SPRINKLER FITTERS	14.68	.95	1.40		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE FOR GLAZIERS

a - Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$13.85	.65	.50		.15
GROUP 2	13.35	.65	.50		.15
GROUP 3	11.40	.65	.50		.15

Group 1: Blade Grader, self-propelled; Clam Shells; Cable Ways; Cranes, power operated (all types); Air Compressors, Pumps, Welding Machines and Light Plants (7 to 12 machines); Derricks, power operated (all types); Draglines; Elevating Graders, self-propelled; Hoist, 2 drums or more; Locomotive; Mixermobiles; Paving Mixers, all types; Pile Drivers; Scrapers; Bulldozers; Side Boom; Cherry Pickers-12½ tons and over; Shovels; Heavy Duty Mechanics; All Welders; All tractors with power attachments; Ditching Machines - crawler type; Farm type Tractor (Loader, 1 yd. and over) with Backhoe

Group 2: Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants (3 to 6 machines); Cherry Pickers - under 12½ tons; Ditch Witch - J30 and under; Farm type Tractor (Loader under 1 yd.) with Backhoe; Go-Devil; Mixers, 14 cu. ft. or over; Rollers over 10 tons; Air Compressor and one Tugger; Boilers, 2 or more; Winch Trucks; Front End Scoopmobile, Loader, Payloader; Blade Grader, towed; Elevators, building; Fork Lifts; Hoist, single drum or 1 line hoisting (1 tugger); Mixers less than 15 cu. ft.; Rollers; Screening Plants; Crushing Plants; Tractors - Wheel type except when hauling material

Group 3: Oiler

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Jefferson & Orange
DECISION NO.: TX82-4005 DATE: Date of Publication
Supersedes Decision No. TX81-4077, dated October 2, 1981, in 46 FR 48859.
DESCRIPTION OF WORK: Building (including Residential) Projects.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Jefferson County	$15.05	1.10	1.18		.08
Orange County	15.36	.825	1.23		.05
BOILERMAKERS	14.80	1.275	1.00		.04
BRICKLAYERS & STONEMASONS	15.68	.94	1.10		.06
CARPENTERS:					
Carpenters:					
Commercial	14.37	.85	.60		.065
Residential construction of not more than 2 units & condominium townhouses of not more than 10 units excluding all apartment construction & multiple buildings for rental purposes	13.59	.85	.60		.065
Millwrights	14.625	.85	.60		.05
Piledrivermen	14.51	.85	.60		
CEMENT MASONS	14.62				
ELECTRICIANS	17.70	.60	3%+.435		.10
ELEVATOR CONSTRUCTORS:					
Mechanics	13.90	1.345	.95	a+b	.035
Helpers	70%JR	1.345	.95	a+b	.035
Helpers (Probationary)	50%JR				
GLAZIERS:					
Northern 1/2 of Jefferson Co.	12.92	.60			
Southern 1/2 of Jefferson Co. & all of Orange Co.:					
Commercial	13.91	.82			.05
Residential	11.95	.60			.05
IRONWORKERS	13.60	.80	1.70		.10
LABORERS:					
GROUP 1	9.71	.60	.60		.05
GROUP 2	9.91	.60	.60		.05
GROUP 3	10.01	.60	.60		.05
GROUP 4	10.16	.60	.60		.05

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - All hand digging & dirt work; backfilling; loading & unloading of materials to & from hoist or cages; loading & unloading of tools & equipment; handling of lumber, steel, cement; distribution of materials; wrecking & razing of buildings & structures; storing materials & tools in and out of receiving lots & sheds; dumper; spotter; carpenter tender & all construction work not hereinafter classified

GROUP 2 - Air power tool operator; cutting torch operator; gunnite rebound man; machine operators; power buggy operator; sandblaster (potmen); drill tenders; concrete grademen; wagon drill operator; metal pan & steel form men

GROUP 3 - Concrete burner; cement mason tender; hod carrier, mortar mixers, plaster tenders & brick mason tenders; pipelayer, pumpcrete nozzlemen; scaffold builder; water pump operator; tank cleaning; all pipe cleaning & wrapping; mortar & plaster mixing machines, grout machine; pumpcrete machines; gunnite mixing machines, including placing & cleaning of all pipe & conduits used in placing of concrete

GROUP 4 - Powdermen & blasters; sandblaster; gunnite workers; terrazzo grinders

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$14.37	.85	.60		.065
LINE CONSTRUCTION:					
Linemen & cable splicers	18.24*	.60	3%		1/2%
Groundmen	13.32	.60	3%		1/2%
PAINTERS:					
Southern 1/2 of Jefferson Co. & all of Orange Co.:					
COMMERCIAL:					
GROUP 1 - Brush, steel wood & wall paperhanger	13.91	.82			.05
GROUP 2 - Spray, roller, sandblaster, power cleaning, all time spent rigging; hot paint or creosote brush	14.36	.82			.05
GROUP 3 - Hot paint or creosote spray or roller	14.71	.82			.05
RESIDENTIAL:					
Brush	11.95	.60			.05
Paperhanger	12.20	.60			.05
Spray	12.47	.60			.05
Sandblaster, power cleaning	12.21	.60			.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
Northern 1/2 of Jefferson Co.:					
GROUP 1 - Brush:					
Commercial	$12.80	.82			
Residential	12.55	.82			
GROUP 2 - Paper & vinyl hangers:					
Commercial	13.05	.82			
Residential	12.80	.82			
GROUP 3 - Brush, steel:					
Commercial	12.97	.82			
GROUP 4 - Spray:					
Commercial	13.22	.82			
Residential	12.97	.82			
Twenty-five cents (25¢) per hour above the prevailing wage rate when working on window jacks or ledge, swing stage, bosun chair, cat walks, spider & skates in all classifications.	14.62	.87	1.00		.15
PIPEFITTERS	15.20	.92	.75		.02
PLASTERERS	12.96	.95	.75		.03
PLUMBERS					
ROOFERS:					
Composition	12.96	.57	.50	.35	.06
Slate and tile	13.71	.57	.50	.35	.06
Kettlemen	12.06	.57	.50	.35	.06
SHEET METAL WORKERS:					
Commercial	14.48	3%+.70	.84		.18
Work on a single family dwelling or multiple family housing unit less than 3 stories in height where each individual family apartment is individually conditioned by a separate & independent unit or system	9.41	3%+.70	.84		.18
SPRINKLER FITTERS	14.68	.95	1.40		.08
TILE SETTERS	14.17	.94	1.10		.06

DECISION NO. TX82-4005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
GROUP 1 - Under 1-1/2 tons & wash, grease, tireman, fuel pump operators when used on construction	$11.25	.79			
GROUP 2 - 1-1/2 tons thru 2-1/2 tons, dump truck less than 7 yds.	12.04	.79			
GROUP 3 - Over 2-1/2 tons, farm tractors (when used to transport personnel or material), fork lifts (when used in warehouses, storage yards & when used to transport material), floats, hydraulic tail gate lifts; euclids (not self-loading)	12.33	.79			
GROUP 4 - Warehousemen-material checker; town driver	12.51	.79			
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES FOR ELEVATOR CONSTRUCTORS
a - 1st 6 mos. - none; 5 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate
b - Paid Holidays A thru G

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

DECISION NO. TX82-4005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP 1	$15.185		.75		
GROUP 2	12.71		.75		
GROUP 3	11.69		.75		
GROUP 4	±1.44		.75		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy duty mechanic; Blade grade, self-propelled; Bull clam; Back filler; Derrick-power operated, all types; Dragline; Push cat; Bulldozer & all types of cat tractors; Cableway; Backhoe; Shovel; Crane-power operated, all types; Elevating grader, self-propelled; Hoist - motor driven, two drums or more; Mix mobile; Winch truck; Locomotive crane; Mixer, 14 cu. ft. or more; Paving mixer,all sizes; Piledrivers; Scraper-heavy type, over 3 cu. yds.; Trench machines, all sizes; Gradeall; High-lift; Foundation boring machines; Gasoline or diesel driven welding machines-7 to 12 machines; Pumpcrete machine; Drill operator - Water well; DW-10 euclid; Tournapulls; Asphalt Plants; Crushing machines and batch plants; Scoopmobiles; Fingerlift operator; Elevator when used to haul men or material on construction work; Well point system & operation of similar dewatering devices
GROUP 2 - Air compressor; Blade grade-towed; Flex plane; Form grader; Mixer, less than 14 cu. ft.; Pump, Pulsometer; Truck crane driver; Gasoline or diesel welding machines, 3 to 6 machines; Hoist-single drum; Scraper, 3 cu. yds. or less; Conveyors-power operated
GROUP 3 - Fireman
GROUP 4 - Oiler

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in to labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Nebraska COUNTY: Lancaster
DECISION NO.: NE82-4004 DATE: Date of publication
Supersedes Decision No.: NE81-4028 dated April 17, 1981 in 46 FR 22549
DESCRIPTION OF WORK: Building Projects, (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$12.375		.90		
Carpenters	10.935	.65	1.00		.05
Cement masons	7.97				
Electricians	14.14	.87	3%+1.00		.06
Elevator mechanic	14.54	1.345	1.085	a+8%	.035
Glaziers	14.45	.90	.60		.01
Ironworkers	12.60	1.10	1.25	1.00	.05
Laborers:					
Laborers	6.30				
Mason tenders	8.995	.65	.35		
Plasterers tenders	9.07	.65	.35		
Painters	10.34	.65	.30		
Plasterers	10.955				
Plumbers & pipefitters	14.64	.85	.90		.10
Roofers	10.85	.50	.30		.02
Sheet metal workers	13.52	.75	.60	.84	.08
Tile setters	12.70				
Truck drivers	5.56				
Power Equipment Operators:					
Motor grader	7.00				
Oiler	8.61	.82	.50		
Scraper	7.00				
Bulldozer	9.00				
Fork lift	9.94	.82	.50		
Cranes	10.67	.82	.50		
Backhoes	7.52				
Front end loader	8.52				
Roller	7.27				
Tractor	6.50				
Sprinkler fitters	15.31	.95	1.40		

FOOTNOTES:
a - Employer contributes 6% of the basic hourly rate for 6 months to 5 years service and 8% of the basic hourly rate for over 5 years service as Vacation Pay Credit, also 7 paid holidays.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)".

[FR Doc. 82-2075 Filed 1-28-82; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
January 29, 1982

Part IV

Department of Agriculture

Federal Grain Inspection Service

Grain Standards; Inspection Points

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Termination of Designations of the Kankakee Grain Inspection Bureau, Inc., and Grain Inspection, Inc.

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice announces that the designations of two official agencies will terminate on July 31, 1982, and requests applications from parties interested in being designated as agencies to conduct official inspection services in the geographic areas currently serviced by each of the two present agencies. The two official agencies are the Kankakee Grain Inspection Bureau, Inc., and Grain Inspection, Inc.

DATE: Applications to be postmarked on or before March 1, 1982.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405, Auditors Building, Washington, DC 20250, telephone (202) 447–8525.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

Section 7(f)(1) of the U.S. Grain Standards Act, as amended (7 U.S.C. 71, *et seq.*, at 79(f)(1)) (Act), specifies that the Administrator of the Federal Grain Inspection Service is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official inspection services after a determination is made that the applicant is better able than any other applicant to provde official inspection services in an assigned geographic area.

The Kankakee Grain Inspection Bureau, Inc. (Kankakee), P.O. Box 102, Kankakee, Illinois 60901, was designated as an official agency under the Act for the performance of official grain inspection functions on February 14, 1979. Grain Inspection, Inc. (Jamestown), P.O. Box 1652, Jamestown, North Dakota 58401, was designated as an official agency under the Act for the performance of official grain inspection functions on March 1, 1979. The two agencies' designations will terminate on July 31, 1982. This date reflects administrative extensions of official agency designations as discussed in the July 16, 1979, issue of the Federal Register (44 FR 41275). Section 7(g)(1) of the Act states generally that designations of official agencies shall terminate no later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Kankakee in the State of Illinois pursuant to Section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the following:

In Illinois, the area shall be:

Bounded: on the North by the northern Bureau County line; the northern LaSalle and Grundy County lines; the northern Will County line east-southeast to Interstate 57;

Bounded: on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;

Bounded: on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to U.S. Route 51; U.S. Route 51 north to State Route 18; State Route 18 west to State Route 26; State Route 26 north to Interstate 180; Interstate 180 west to State Route 29; State Route 29 south to the Bureau County line; the southern Bureau County line west to State Route 88; and

Bounded: on the West by State Route 88 north to the Bureau County line.

An exeption to the described geographic area is the following location situated inside Kankakee's area which has been and will continue to be serviced by the Eastern Iowa Grain Inspection and Weighing Service, Inc.: Leland Farmers Company, Leland, Illinois, LaSalle County.

The geographic area presently assigned to Jamestown in the State of North Dakota pursuant to Section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the following:

In North Dakota, the area shall be:

Bounded: on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to U.S. Route 52; U.S. Route 52 southeast to State Route 15; State Route 15 east to U.S. Route 281; U.S. Route 281 south to Foster County; the northern Foster County line; the northern Griggs County line east to State Route 32;

Bounded: on the East State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded: on the South by the southern Dickey county line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west to State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Chicago Milwaukee St. Paul and Pacific Railroad line; the Chicago Milwaukee St. Paul and Pacific Railroad line northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and

Bounded: on the West by the western North Dakota State line north to Interstate 94.

Also, the following locations, all in North Dakota, which are outside of the foregoing contiguous area, and which are presently assigned to Jamestown, and which are part of the geographic area that may be assigned to the applicant selected for designation are:

1. Farmers Coop Elevator, Fessenden, Wells County;

2. Farmers Union Elevator and Manfred Grain, Manfred, Wells County; and

3. Norway Spur and Oakes Grain, Oakes, Dickey County.

Exceptions to the described geographic area are the following locations, all in North Dakota, situated inside Jamestown's area which have been and will continue to be serviced by these official agencies:

Aberdeen Grain Inspection, Inc.:

1. Farmers Elevator, Guelph, Dickey County;

2. Farmers Equity Exchange and Sun Grain, New England, Hettinger County; and

3. Regent Grain Company and Regent Equity, Regent, Hettinger County.

Minot Grain Inspection, Inc.:

1. Farmers Elevator & Mercantile Co., and Coast Trading Company, Underwood, McLean County; and

2. Merle A. Larson Elevator, Inc., Washburn, McLean County.

Interested parties, including Kankakee and Jamestown, are hereby given

opportunity to apply for designation as the official agency for each respective specified geographic area, as described above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. The designations in each specified geographic area are for the period beginning August 1, 1982, and terminating July 31, 1985. Parties wishing to apply for either of these designations should contact the Chief, Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than March 1, 1982 to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official inspection service in the geographic areas, consideration will be given to all applications submitted and all other information available to the Administrator. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: January 25, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–2432 Filed 1–28–82; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to Little Rock Grain Exchange Trust and Memphis Grain and Hay Association, Inc.

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to the Little Rock Grain Exchange Trust (Little Rock), and the Memphis Grain and Hay Association, Inc. (Memphis). The two designations terminate effective 12 p.m., May 31, 1982.

DATE: Comments to be postmarked on or before March 30, 1982.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–0231. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The December 30, 1981, issue of the **Federal Register** (46 FR 63170) contained a notice from the Federal Grain Inspection Service (FGIS) requesting applications for designation to perform official inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to Little Rock and Memphis, respectively. Applications were to be postmarked by January 29, 1982.

One applicant requested designation for all of the geographic area currently assigned to Little Rock. That applicant is the Little Rock Grain Exchange Trust, North Little Rock, Arkansas. Little Rock applied for a renewal of designation for an additional 3-year period.

One applicant requested designation for all of the geographic area currently assigned to Memphis. That applicant is the Memphis Grain and Hay Association, Inc., Memphis, Tennessee. Memphis applied for a renewal of designation for an additional 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants.

All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than March 30, 1982.

Consideration will be given to all comments filed and to all other information available to the Administrator of FGIS before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register** and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: January 25, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–2433 Filed 1–28–82; 8:45 am]

BILLING CODE 3410-EN-M

Renewals of Designation of the Alabama Department of Agriculture and Industries and the D. R. Schaal Agency

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewals of designation of the Alabama Department of Agriculture and Industries (Alabama), and the D. R. Schaal Agency (Schaal), as official agencies responsible for providing grain inspection and weighing services and inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71, et seq.) (Act).

EFFECTIVE DATE: March 1, 1982.

ADDRESS: James R.Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250, telephone (202) 447–8525.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The September 1, 1981, issue of the **Federal Register** (46 FR 43947) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Alabama and Schaal's designations were terminating on February 28, 1982, and requesting applications for designation as the agency to provide official inspection, official weighing, and supervision of weighing services and official inspection services within each specified assigned area. Applications were to be postmarked by October 1, 1981.

FGIS announced the names of the applicants for designation for each of the two agencies and requested comments on same in the October 30, 1981, issue of the **Federal Register** (46 FR 54065). Comments were to be postmarked by December 29, 1981.

One favorable comment was received regarding the renewal of designation of Alabama (the only applicant) as the official agency in the area cited in the September 1 issue of the **Federal Register.**

After considering all available information in relation to the criteria for designation in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), it has been determined that Alabama is able to provide official services in the geographic area for which its designation is being renewed. This assigned area is the entire geographic area as described in the September 1 issue of the **Federal Register.**

There were two applicants requesting designation for all of the geographic area currently assigned to Schaal. One was the D. R. Schaal Agency applying for a renewal of designation; the other was George Nolen, of Des Moines, Iowa, who proposed to establish a new official agency. Two favorable comments were received regarding the renewal of designation of Schaal; no comments were received regarding the designation of George Nolen as the official agency in the area as cited in the September 1 issue of the **Federal Register.**

After considering all available information in relation to the criteria for designation in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), it has been determined that Schaal is better able to provide offical services in the geographic area for which it is being selected, and its designation is being renewed. This assigned area is the entire geographic area as described in the September 1 issue of the **Federal Register.**

Effective March 1, 1982, the responsibility for providing official inspection, official weighing, and supervision of weighing services for Alabama and official inspection services for Schaal in each geographic area as specified above will be assigned to Alabama and Schaal, respectively. Designations of each of the two agencies will terminate February 28, 1985.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the agencies will provide official inspection services not requiring a licensed inspector to all other areas within their geographic area.

Interested persons may obtain a list of the specified service points by contacting the specific agencies at the following addresses:

Alabama Department of Agriculture and Industries, Room 200, Richard Beard Building, 1445 Federal Drive, Montgomery, AL 36109.

D. R. Schaal Agency, Highway 69 South, P.O. Box 213, Belmond, IA 50421.

Interested persons may also contact the Regulatory Branch at the address listed above to obtain the information concerning specified service points.

(Sec. 8, Sec. 9, Pub. L. 94–582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: January 25, 1982.

J. T. Abshier

Director, Compliance Division.

[FR Doc. 82–2434– Filed 1–28–82; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Applicant for Designation in the State of Alaska

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for designation, under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 et seq.) (Act), as the official agency in the State of Alaska, excluding export port locations.

DATE: Comments to be postmarked on or before March 30, 1982.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–0231. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The November 30, 1981, issue of the **Federal Register** (46 FR 58268) contained a notice from FGIS requesting applications for designation to perform official inspection services under the Act in the State of Alaska, excluding export port locations. Applications were to be postmarked by December 28, 1981.

One applicant requested designation for all of the geographic area in the State of Alaska, excluding export port locations. That applicant is the Alaska Department of Natural Resources, Division of Agriculture, which proposes to establish an official agency.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicant. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than March 30, 1982.

Consideration will be given to all comments filed and to all other information available to the Administrator of FGIS before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register** and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: January 25, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–2435 Filed 1–28–82; 8:45 am]

BILLING CODE 3410–EN–M

federal register

Friday
January 29, 1982

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-82-1107]

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice of publication of annual adjustment factors pursuant to 24 CFR 888.

SUMMARY: This notice sets forth annual adjustment factors which are to be used to adjust rents under the Section 8 Housing Assistance Payments Programs.

FOR FURTHER INFORMATION CONTACT: Cecelia D. McConnell, Existing Housing Division, Office of Existing Housing and Moderate Rehabilitation, (202) 755-6596, Jerry Noel, Management Procedures Division, Office of Multifamily Housing Management and Occupancy, (202) 426-7624, Daniel Sloan, Office of State Agencies and Bond Financed Programs, (202) 426-0730 or for technical information regarding the development of the schedules for specific areas or the method used for calculating the adjustment factors, contact Ellis V. St. Clair, Economic and Market Analysis Division, Office of Policy Development and Research, (202) 755-5816, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. These are not toll-free numbers.

EFFECTIVE DATE: November 8, 1981.

SUPPLEMENTARY INFORMATION: In accordance with Section 8(c)(2)(A) of the U.S. Housing Act of 1937, the Department is revising the Annual Adjustment Factors. Pursuant to 24 CFR 888.202, the Factors are required to be published in the **Federal Register** at least annually by Notice. Annual adjustment factors were published on November 17, 1980 (45 FR 76052), and were effective on November 8, 1980, the anniversary date for publication of the factors. For the Section 8 existing program ("finders-keepers") the revised factors set forth in this Notice shall be applied for HAP Contract anniversary dates which fall on or after the publication date of the revised factors. For the other Section 8 programs, the revised factors shall be applied for HAP Contract anniversary dates which fall on or after November 8, 1981. This Notice is effective as of November 8, 1981.

Different adjustment factors are provided for 37 Standard Metroplitan Statistical Areas (SMSAs) and for the four Census Regions. The Factors now being published are arranged in a new format. The matrix of adjustment factors for contract rents is now arranged in fifty dollar intervals. There is for the first time a matrix of adjustment factors for contract rents excluding utilities by rent ranges and bedroom sizes, instead of a single factor. The new adjustment factors for each area have been calculated in two stages. In the first stage, a single gross rent adjustment factor was developed for each area based on the changes in the rent and utility components of the Consumer Price Index (CPI) for the most recent twelve-month period. In the second stage, separate matrices of adjustment factors for contract rents including utilities and for contract rents excluding utilities by rent ranges and bedroom sizes were developed based on data obtained from the 1979 Annual Housing Survey (AHS) national sample.

NEPA

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, HUD, 451 7th Street, S.W., Washington, D.C. 20410.

Authority: Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d); sec. 8(c)(2)(A), U.S. Housing Act of 1937.

Issued at Washington, D.C., January 18, 1982.

Philip D. Winn,

Assistant Secretary for Housing-Federal Housing Commissioner.

BILLING CODE 4210-01-M

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
NORTHEAST CENSUS REGION										
LESS THAN $200	1.114	1.121	1.129	1.137	1.145	1.078	1.062	1.060	1.060	1.044
200 TO 249	1.103	1.110	1.116	1.122	1.128	1.070	1.058	1.057	1.057	1.042
250 TO 299	1.093	1.098	1.102	1.107	1.111	1.064	1.052	1.052	1.052	1.042
300 TO 349	1.084	1.089	1.093	1.098	1.102	1.056	1.048	1.048	1.049	1.041
350 TO 399	1.075	1.080	1.085	1.089	1.092	1.052	1.044	1.044	1.045	1.039
400 TO 449	1.070	1.073	1.078	1.083	1.087	1.048	1.040	1.041	1.042	1.037
450 TO 499	1.064	1.067	1.072	1.076	1.081	1.043	1.037	1.038	1.039	1.035
500 TO 549	1.058	1.062	1.067	1.071	1.076	1.038	1.033	1.035	1.036	1.035
550 TO 599	1.052	1.057	1.062	1.066	1.071	1.034	1.033	1.035	1.036	1.035
600 OR MORE	1.048	1.052	1.057	1.062	1.066	1.034	1.033	1.035	1.036	1.035
NORTH CENTRAL CENSUS REGION										
LESS THAN $200	1.092	1.098	1.104	1.111	1.117	1.074	1.077	1.064	1.066	1.068
200 TO 249	1.084	1.088	1.093	1.098	1.103	1.066	1.067	1.059	1.060	1.061
250 TO 299	1.075	1.079	1.083	1.086	1.090	1.060	1.060	1.053	1.054	1.054
300 TO 349	1.068	1.072	1.075	1.079	1.082	1.053	1.054	1.049	1.050	1.051
350 TO 399	1.061	1.065	1.068	1.072	1.075	1.049	1.049	1.044	1.046	1.047
400 TO 449	1.056	1.059	1.063	1.067	1.070	1.044	1.044	1.041	1.042	1.044
450 TO 499	1.052	1.054	1.058	1.061	1.065	1.040	1.041	1.038	1.039	1.041
500 TO 549	1.047	1.050	1.054	1.057	1.061	1.036	1.037	1.034	1.036	1.038
550 TO 599	1.042	1.046	1.050	1.053	1.057	1.032	1.034	1.034	1.036	1.038
600 OR MORE	1.038	1.042	1.046	1.050	1.053	1.032	1.034	1.034	1.036	1.038
SOUTH CENSUS REGION										
LESS THAN $200	1.107	1.115	1.122	1.129	1.136	1.087	1.090	1.076	1.079	1.082
200 TO 249	1.097	1.103	1.109	1.115	1.121	1.078	1.079	1.070	1.072	1.073
250 TO 299	1.088	1.092	1.096	1.101	1.105	1.070	1.071	1.062	1.064	1.064
300 TO 349	1.079	1.084	1.088	1.092	1.096	1.062	1.063	1.057	1.059	1.061
350 TO 399	1.071	1.075	1.080	1.084	1.087	1.057	1.058	1.052	1.054	1.056
400 TO 449	1.066	1.069	1.074	1.078	1.082	1.052	1.052	1.048	1.050	1.053
450 TO 499	1.060	1.063	1.067	1.072	1.076	1.047	1.048	1.044	1.046	1.049
500 TO 549	1.055	1.058	1.063	1.067	1.071	1.042	1.044	1.041	1.043	1.045
550 TO 599	1.049	1.054	1.058	1.062	1.067	1.038	1.040	1.041	1.043	1.045
600 OR MORE	1.045	1.049	1.054	1.058	1.062	1.038	1.040	1.041	1.043	1.045

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
WEST CENSUS REGION										
LESS THAN $200	1.107	1.114	1.122	1.129	1.136	1.106	1.116	1.127	1.139	1.129
200 TO 249	1.097	1.103	1.109	1.115	1.120	1.093	1.100	1.107	1.115	1.111
250 TO 299	1.088	1.092	1.096	1.101	1.105	1.082	1.089	1.095	1.102	1.097
300 TO 349	1.079	1.084	1.088	1.092	1.096	1.073	1.078	1.084	1.090	1.088
350 TO 399	1.071	1.075	1.080	1.084	1.087	1.066	1.071	1.076	1.082	1.081
400 TO 449	1.065	1.069	1.073	1.078	1.081	1.060	1.064	1.069	1.074	1.074
450 TO 499	1.060	1.063	1.067	1.072	1.076	1.055	1.059	1.064	1.069	1.069
500 TO 549	1.055	1.058	1.063	1.067	1.071	1.049	1.053	1.058	1.063	1.063
550 TO 599	1.049	1.054	1.058	1.062	1.067	1.044	1.049	1.053	1.058	1.063
600 OR MORE	1.045	1.049	1.054	1.058	1.062	1.044	1.049	1.053	1.058	1.063
AHAHEIM-SANTA ANA-GARDEN GROVE,CA SMSA										
LESS THAN $200	1.113	1.121	1.128	1.136	1.144	1.110	1.121	1.115	1.125	1.136
200 TO 249	1.103	1.109	1.115	1.121	1.127	1.096	1.104	1.100	1.108	1.116
250 TO 299	1.093	1.097	1.102	1.106	1.111	1.085	1.092	1.087	1.094	1.100
300 TO 349	1.084	1.088	1.093	1.097	1.101	1.075	1.081	1.079	1.085	1.091
350 TO 399	1.075	1.080	1.084	1.089	1.092	1.069	1.073	1.071	1.076	1.083
400 TO 449	1.069	1.073	1.078	1.082	1.086	1.063	1.066	1.065	1.070	1.076
450 TO 499	1.063	1.067	1.071	1.076	1.080	1.056	1.060	1.059	1.064	1.070
500 TO 549	1.058	1.062	1.066	1.071	1.075	1.050	1.055	1.054	1.059	1.064
550 TO 599	1.052	1.057	1.061	1.066	1.070	1.046	1.050	1.054	1.059	1.064
600 OR MORE	1.047	1.052	1.057	1.061	1.066	1.046	1.050	1.054	1.059	1.064
ANCHORAGE,AK SMSA										
LESS THAN $200	1.070	1.075	1.080	1.084	1.089	1.050	1.050	1.038	1.036	1.036
200 TO 249	1.064	1.068	1.071	1.075	1.079	1.046	1.044	1.036	1.035	1.034
250 TO 299	1.057	1.060	1.063	1.066	1.069	1.042	1.041	1.033	1.032	1.031
300 TO 349	1.052	1.055	1.058	1.060	1.063	1.037	1.036	1.031	1.031	1.030
350 TO 399	1.046	1.049	1.052	1.055	1.057	1.034	1.033	1.028	1.028	1.029
400 TO 449	1.043	1.045	1.048	1.051	1.053	1.031	1.030	1.027	1.027	1.027
450 TO 499	1.039	1.041	1.044	1.047	1.050	1.028	1.028	1.024	1.025	1.025
500 TO 549	1.036	1.038	1.041	1.044	1.047	1.025	1.025	1.022	1.023	1.024
550 TO 599	1.032	1.035	1.038	1.041	1.044	1.023	1.023	1.022	1.023	1.024
600 OR MORE	1.029	1.032	1.035	1.038	1.041	1.023	1.023	1.022	1.023	1.024

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
ATLANTA,GA SMSA										
LESS THAN $200	1.127	1.135	1.144	1.152	1.161	1.127	1.141	1.135	1.148	1.162
200 TO 249	1.115	1.122	1.129	1.136	1.142	1.111	1.120	1.117	1.128	1.138
250 TO 299	1.103	1.109	1.114	1.119	1.124	1.098	1.106	1.102	1.111	1.118
300 TO 349	1.094	1.099	1.104	1.109	1.113	1.086	1.093	1.092	1.100	1.107
350 TO 399	1.084	1.089	1.094	1.099	1.103	1.079	1.084	1.082	1.090	1.097
400 TO 449	1.077	1.082	1.087	1.092	1.096	1.072	1.076	1.076	1.082	1.089
450 TO 499	1.071	1.074	1.080	1.085	1.090	1.064	1.069	1.069	1.075	1.082
500 TO 549	1.065	1.069	1.074	1.079	1.084	1.058	1.063	1.063	1.069	1.075
550 TO 599	1.058	1.063	1.068	1.074	1.079	1.052	1.057	1.063	1.069	1.075
600 OR MORE	1.053	1.058	1.063	1.068	1.074	1.052	1.057	1.063	1.069	1.075
BALTIMORE,MD SMSA										
LESS THAN $200	1.116	1.124	1.132	1.140	1.147	1.092	1.095	1.079	1.081	1.083
200 TO 249	1.105	1.112	1.118	1.124	1.131	1.083	1.083	1.072	1.074	1.075
250 TO 299	1.095	1.100	1.104	1.109	1.114	1.074	1.075	1.065	1.066	1.066
300 TO 349	1.086	1.091	1.095	1.100	1.104	1.066	1.067	1.060	1.062	1.063
350 TO 399	1.077	1.082	1.086	1.091	1.094	1.061	1.061	1.055	1.056	1.058
400 TO 449	1.071	1.075	1.080	1.084	1.088	1.056	1.055	1.051	1.053	1.055
450 TO 499	1.065	1.068	1.073	1.078	1.082	1.050	1.051	1.047	1.048	1.051
500 TO 549	1.059	1.063	1.068	1.073	1.077	1.045	1.046	1.043	1.045	1.047
550 TO 599	1.053	1.058	1.063	1.067	1.072	1.040	1.042	1.043	1.045	1.047
600 OR MORE	1.049	1.053	1.058	1.063	1.067	1.040	1.042	1.043	1.045	1.047
BOSTON,MA SMSA										
LESS THAN $200	1.162	1.173	1.184	1.195	1.205	1.130	1.135	1.113	1.116	1.120
200 TO 249	1.147	1.156	1.164	1.173	1.182	1.116	1.118	1.103	1.106	1.108
250 TO 299	1.132	1.139	1.145	1.152	1.158	1.105	1.106	1.093	1.095	1.095
300 TO 349	1.120	1.126	1.133	1.139	1.145	1.093	1.094	1.085	1.088	1.090
350 TO 399	1.107	1.114	1.120	1.127	1.131	1.086	1.086	1.077	1.080	1.083
400 TO 449	1.099	1.104	1.111	1.117	1.123	1.078	1.078	1.072	1.075	1.078
450 TO 499	1.091	1.095	1.102	1.108	1.115	1.071	1.072	1.066	1.069	1.072
500 TO 549	1.083	1.088	1.095	1.101	1.108	1.063	1.065	1.060	1.064	1.067
550 TO 599	1.074	1.081	1.087	1.094	1.101	1.057	1.059	1.060	1.064	1.067
600 OR MORE	1.068	1.074	1.081	1.087	1.094	1.057	1.059	1.060	1.064	1.067

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
BUFFALO,NY SMSA										
LESS THAN $200	1.090	1.096	1.102	1.108	1.114	1.058	1.054	1.036	1.032	1.028
200 TO 249	1.082	1.086	1.091	1.096	1.101	1.053	1.049	1.036	1.032	1.028
250 TO 299	1.073	1.077	1.081	1.084	1.088	1.049	1.046	1.034	1.032	1.028
300 TO 349	1.066	1.070	1.074	1.077	1.080	1.044	1.041	1.033	1.031	1.028
350 TO 399	1.059	1.063	1.067	1.070	1.073	1.041	1.038	1.031	1.029	1.028
400 TO 449	1.055	1.058	1.062	1.065	1.068	1.037	1.035	1.029	1.028	1.027
450 TO 499	1.050	1.053	1.056	1.060	1.064	1.034	1.032	1.027	1.026	1.026
500 TO 549	1.046	1.049	1.052	1.056	1.060	1.030	1.029	1.025	1.024	1.024
550 TO 599	1.041	1.045	1.049	1.052	1.056	1.027	1.027	1.025	1.024	1.024
600 OR MORE	1.038	1.041	1.045	1.049	1.052	1.027	1.027	1.025	1.024	1.024
CHICAGO,IL SMSA										
LESS THAN $200	1.087	1.093	1.099	1.105	1.110	1.068	1.070	1.058	1.059	1.060
200 TO 249	1.079	1.084	1.088	1.093	1.098	1.061	1.062	1.053	1.054	1.055
250 TO 299	1.071	1.075	1.078	1.082	1.085	1.055	1.056	1.048	1.049	1.049
300 TO 349	1.064	1.068	1.071	1.075	1.078	1.049	1.050	1.044	1.045	1.046
350 TO 399	1.058	1.061	1.065	1.068	1.070	1.045	1.045	1.040	1.041	1.043
400 TO 449	1.053	1.056	1.060	1.063	1.066	1.041	1.041	1.037	1.039	1.040
450 TO 499	1.049	1.051	1.055	1.058	1.062	1.037	1.038	1.034	1.036	1.037
500 TO 549	1.044	1.047	1.051	1.054	1.058	1.033	1.034	1.032	1.033	1.035
550 TO 599	1.040	1.043	1.047	1.050	1.054	1.030	1.031	1.032	1.033	1.035
600 OR MORE	1.036	1.040	1.043	1.047	1.050	1.030	1.031	1.032	1.033	1.035
CINCINNATI,OH-KY-IN SMSA										
LESS THAN $200	1.111	1.118	1.126	1.133	1.140	1.098	1.106	1.095	1.101	1.108
200 TO 249	1.101	1.106	1.112	1.118	1.124	1.087	1.091	1.084	1.089	1.094
250 TO 299	1.090	1.095	1.099	1.104	1.108	1.078	1.081	1.074	1.079	1.082
300 TO 349	1.082	1.086	1.091	1.095	1.099	1.069	1.072	1.068	1.072	1.075
350 TO 399	1.073	1.078	1.082	1.087	1.090	1.063	1.065	1.061	1.065	1.069
400 TO 449	1.068	1.071	1.076	1.080	1.084	1.057	1.059	1.056	1.060	1.064
450 TO 499	1.062	1.065	1.069	1.074	1.078	1.052	1.054	1.052	1.055	1.059
500 TO 549	1.056	1.060	1.065	1.069	1.074	1.046	1.049	1.047	1.051	1.054
550 TO 599	1.051	1.055	1.060	1.064	1.069	1.042	1.045	1.047	1.051	1.054
600 OR MORE	1.046	1.051	1.055	1.060	1.064	1.042	1.045	1.047	1.051	1.054

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
CLEVELAND,OH SMSA										
LESS THAN $200	1.085	1.091	1.097	1.103	1.108	1.060	1.058	1.043	1.041	1.040
200 TO 249	1.078	1.082	1.087	1.091	1.096	1.055	1.052	1.042	1.040	1.038
250 TO 299	1.070	1.073	1.077	1.080	1.084	1.050	1.048	1.038	1.037	1.035
300 TO 349	1.063	1.067	1.070	1.074	1.076	1.044	1.043	1.036	1.036	1.035
350 TO 399	1.057	1.060	1.063	1.067	1.069	1.041	1.040	1.033	1.033	1.033
400 TO 449	1.052	1.055	1.059	1.062	1.065	1.038	1.036	1.031	1.031	1.031
450 TO 499	1.048	1.050	1.054	1.057	1.061	1.034	1.033	1.029	1.029	1.029
500 TO 549	1.044	1.046	1.050	1.053	1.057	1.030	1.030	1.026	1.027	1.027
550 TO 599	1.039	1.043	1.046	1.050	1.053	1.027	1.027	1.026	1.027	1.027
600 OR MORE	1.036	1.039	1.043	1.046	1.050	1.027	1.027	1.026	1.027	1.027
DALLAS-FORT WORTH,TX SMSA										
LESS THAN $200	1.153	1.163	1.173	1.184	1.194	1.111	1.110	1.084	1.081	1.080
200 TO 249	1.139	1.147	1.155	1.164	1.172	1.100	1.098	1.080	1.078	1.076
250 TO 299	1.125	1.131	1.137	1.143	1.150	1.091	1.089	1.073	1.072	1.069
300 TO 349	1.113	1.119	1.125	1.132	1.137	1.081	1.080	1.068	1.068	1.067
350 TO 399	1.101	1.107	1.114	1.120	1.124	1.075	1.073	1.062	1.063	1.063
400 TO 449	1.093	1.099	1.105	1.111	1.116	1.069	1.066	1.058	1.059	1.060
450 TO 499	1.086	1.090	1.096	1.102	1.108	1.062	1.061	1.054	1.055	1.056
500 TO 549	1.078	1.083	1.089	1.095	1.102	1.055	1.056	1.050	1.051	1.052
550 TO 599	1.070	1.076	1.083	1.089	1.095	1.050	1.051	1.050	1.051	1.052
600 OR MORE	1.064	1.070	1.076	1.083	1.089	1.050	1.051	1.050	1.051	1.052
DENVER-BOULDER,CO SMSA										
LESS THAN $200	1.123	1.132	1.140	1.148	1.157	1.106	1.112	1.098	1.103	1.109
200 TO 249	1.112	1.119	1.126	1.132	1.139	1.094	1.097	1.088	1.092	1.096
250 TO 299	1.101	1.106	1.111	1.116	1.121	1.084	1.087	1.078	1.082	1.084
300 TO 349	1.091	1.096	1.101	1.106	1.111	1.074	1.077	1.072	1.075	1.078
350 TO 399	1.082	1.087	1.092	1.097	1.100	1.068	1.070	1.065	1.068	1.072
400 TO 449	1.075	1.080	1.085	1.090	1.094	1.062	1.063	1.060	1.063	1.067
450 TO 499	1.069	1.073	1.078	1.083	1.088	1.056	1.058	1.055	1.058	1.062
500 TO 549	1.063	1.067	1.072	1.077	1.082	1.050	1.053	1.050	1.053	1.057
550 TO 599	1.057	1.062	1.067	1.072	1.077	1.045	1.048	1.050	1.053	1.057
600 OR MORE	1.052	1.057	1.062	1.067	1.072	1.045	1.048	1.050	1.053	1.057

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
DETROIT,MI SMSA										
LESS THAN $200	1.080	1.085	1.091	1.096	1.102	1.057	1.056	1.042	1.040	1.039
200 TO 249	1.073	1.077	1.081	1.086	1.090	1.052	1.050	1.040	1.039	1.038
250 TO 299	1.065	1.069	1.072	1.075	1.078	1.047	1.046	1.037	1.036	1.034
300 TO 349	1.059	1.062	1.066	1.069	1.072	1.042	1.041	1.035	1.034	1.033
350 TO 399	1.053	1.056	1.059	1.063	1.065	1.039	1.038	1.032	1.032	1.032
400 TO 449	1.049	1.052	1.055	1.058	1.061	1.036	1.034	1.030	1.030	1.030
450 TO 499	1.045	1.047	1.050	1.054	1.057	1.032	1.031	1.028	1.028	1.028
500 TO 549	1.041	1.044	1.047	1.050	1.053	1.029	1.029	1.025	1.026	1.026
550 TO 599	1.037	1.040	1.043	1.046	1.050	1.026	1.026	1.025	1.026	1.026
600 OR MORE	1.034	1.037	1.040	1.043	1.046	1.026	1.026	1.025	1.026	1.026
GARY-HAMMOND-EAST CHICAGO,IN SMSA										
LESS THAN $200	1.087	1.093	1.099	1.105	1.110	1.068	1.070	1.058	1.059	1.060
200 TO 249	1.079	1.084	1.088	1.093	1.098	1.061	1.062	1.053	1.054	1.055
250 TO 299	1.071	1.075	1.078	1.082	1.085	1.055	1.056	1.048	1.049	1.049
300 TO 349	1.064	1.068	1.071	1.075	1.078	1.049	1.050	1.044	1.045	1.046
350 TO 399	1.058	1.061	1.065	1.068	1.070	1.045	1.045	1.040	1.041	1.043
400 TO 449	1.053	1.056	1.060	1.063	1.066	1.041	1.041	1.037	1.039	1.040
450 TO 499	1.049	1.051	1.055	1.058	1.062	1.037	1.038	1.034	1.036	1.037
500 TO 549	1.044	1.047	1.051	1.054	1.058	1.033	1.034	1.032	1.033	1.035
550 TO 599	1.040	1.043	1.047	1.050	1.054	1.030	1.031	1.032	1.033	1.035
600 OR MORE	1.036	1.040	1.043	1.047	1.050	1.030	1.031	1.032	1.033	1.035
HONOLULU,HI SMSA										
LESS THAN $200	1.231	1.247	1.262	1.278	1.293	1.162	1.158	1.117	1.110	1.106
200 TO 249	1.210	1.222	1.235	1.247	1.260	1.147	1.141	1.113	1.108	1.103
250 TO 299	1.189	1.198	1.208	1.217	1.226	1.134	1.130	1.104	1.101	1.094
300 TO 349	1.171	1.180	1.190	1.199	1.207	1.119	1.116	1.098	1.096	1.093
350 TO 399	1.153	1.162	1.172	1.181	1.187	1.111	1.107	1.090	1.089	1.089
400 TO 449	1.141	1.149	1.158	1.168	1.176	1.102	1.097	1.084	1.084	1.085
450 TO 499	1.130	1.136	1.145	1.154	1.164	1.092	1.089	1.078	1.078	1.079
500 TO 549	1.118	1.126	1.135	1.144	1.154	1.082	1.082	1.071	1.072	1.074
550 TO 599	1.106	1.115	1.125	1.134	1.144	1.074	1.074	1.071	1.072	1.074
600 OR MORE	1.097	1.106	1.115	1.125	1.134	1.074	1.074	1.071	1.072	1.074

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
HOUSTON,TX SMSA										
LESS THAN $200	1.121	1.129	1.137	1.145	1.154	1.091	1.091	1.072	1.072	1.072
200 TO 249	1.110	1.116	1.123	1.129	1.136	1.082	1.081	1.068	1.068	1.067
250 TO 299	1.099	1.104	1.109	1.114	1.118	1.074	1.073	1.061	1.062	1.060
300 TO 349	1.089	1.094	1.099	1.104	1.108	1.066	1.066	1.057	1.058	1.057
350 TO 399	1.080	1.085	1.090	1.095	1.098	1.061	1.060	1.052	1.053	1.054
400 TO 449	1.074	1.078	1.083	1.088	1.092	1.056	1.054	1.049	1.050	1.051
450 TO 499	1.068	1.071	1.076	1.081	1.086	1.050	1.050	1.045	1.046	1.048
500 TO 549	1.062	1.066	1.071	1.076	1.080	1.045	1.046	1.041	1.043	1.044
550 TO 599	1.056	1.060	1.065	1.070	1.075	1.040	1.041	1.041	1.043	1.044
600 OR MORE	1.051	1.056	1.060	1.065	1.070	1.040	1.041	1.041	1.043	1.044
JERSEY CITY,NJ SMSA										
LESS THAN $200	1.103	1.110	1.117	1.124	1.131	1.072	1.070	1.051	1.048	1.046
200 TO 249	1.094	1.099	1.105	1.111	1.116	1.065	1.063	1.050	1.047	1.045
250 TO 299	1.084	1.089	1.093	1.097	1.101	1.060	1.057	1.046	1.044	1.041
300 TO 349	1.076	1.081	1.085	1.089	1.092	1.053	1.052	1.043	1.042	1.041
350 TO 399	1.068	1.073	1.077	1.081	1.084	1.049	1.047	1.040	1.039	1.039
400 TO 449	1.063	1.067	1.071	1.075	1.079	1.045	1.043	1.037	1.037	1.037
450 TO 499	1.058	1.061	1.065	1.069	1.073	1.041	1.040	1.034	1.034	1.035
500 TO 549	1.053	1.056	1.060	1.065	1.069	1.036	1.036	1.032	1.032	1.032
550 TO 599	1.047	1.052	1.056	1.060	1.064	1.033	1.033	1.032	1.032	1.032
600 OR MORE	1.043	1.047	1.052	1.056	1.060	1.033	1.033	1.032	1.032	1.032
KANSAS CITY,MO-KS SMSA										
LESS THAN $200	1.087	1.093	1.099	1.105	1.111	1.067	1.069	1.056	1.057	1.058
200 TO 249	1.079	1.084	1.088	1.093	1.098	1.061	1.061	1.052	1.053	1.053
250 TO 299	1.071	1.075	1.078	1.082	1.085	1.055	1.055	1.047	1.047	1.047
300 TO 349	1.064	1.068	1.071	1.075	1.078	1.049	1.049	1.043	1.044	1.045
350 TO 399	1.058	1.061	1.065	1.068	1.071	1.045	1.045	1.040	1.040	1.042
400 TO 449	1.053	1.056	1.060	1.063	1.066	1.041	1.040	1.037	1.038	1.039
450 TO 499	1.049	1.051	1.055	1.058	1.062	1.037	1.037	1.034	1.035	1.036
500 TO 549	1.044	1.047	1.051	1.054	1.058	1.033	1.034	1.031	1.032	1.034
550 TO 599	1.040	1.044	1.047	1.051	1.054	1.030	1.031	1.031	1.032	1.034
600 OR MORE	1.036	1.040	1.044	1.047	1.051	1.030	1.031	1.031	1.032	1.034

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
LOS ANGELES-LONG BEACH,CA SMSA										
LESS THAN $200	1.113	1.121	1.128	1.136	1.144	1.110	1.121	1.115	1.125	1.136
200 TO 249	1.103	1.109	1.115	1.121	1.127	1.096	1.104	1.100	1.108	1.116
250 TO 299	1.093	1.097	1.102	1.106	1.111	1.085	1.092	1.087	1.094	1.100
300 TO 349	1.084	1.088	1.093	1.097	1.101	1.075	1.081	1.079	1.085	1.091
350 TO 399	1.075	1.080	1.084	1.089	1.092	1.069	1.073	1.071	1.076	1.083
400 TO 449	1.069	1.073	1.078	1.082	1.086	1.063	1.066	1.065	1.070	1.076
450 TO 499	1.063	1.067	1.071	1.076	1.080	1.056	1.060	1.059	1.064	1.070
500 TO 549	1.058	1.062	1.066	1.071	1.075	1.050	1.055	1.054	1.059	1.064
550 TO 599	1.052	1.057	1.061	1.066	1.070	1.046	1.050	1.054	1.059	1.064
600 OR MORE	1.047	1.052	1.057	1.061	1.066	1.046	1.050	1.054	1.059	1.064
MIAMI,FL SMSA										
LESS THAN $200	1.194	1.208	1.221	1.234	1.247	1.173	1.185	1.167	1.177	1.189
200 TO 249	1.177	1.187	1.198	1.208	1.219	1.153	1.160	1.148	1.157	1.165
250 TO 299	1.159	1.167	1.175	1.183	1.191	1.136	1.143	1.131	1.138	1.143
300 TO 349	1.144	1.152	1.160	1.168	1.174	1.120	1.126	1.119	1.126	1.132
350 TO 399	1.129	1.137	1.145	1.152	1.158	1.111	1.115	1.107	1.114	1.121
400 TO 449	1.119	1.125	1.133	1.141	1.148	1.101	1.103	1.099	1.105	1.112
450 TO 499	1.109	1.114	1.122	1.130	1.138	1.091	1.095	1.091	1.097	1.103
500 TO 549	1.099	1.106	1.114	1.122	1.129	1.081	1.086	1.083	1.089	1.096
550 TO 599	1.089	1.097	1.105	1.113	1.121	1.073	1.078	1.083	1.089	1.096
600 OR MORE	1.081	1.089	1.097	1.105	1.113	1.073	1.078	1.083	1.089	1.096
MILWAUKEE,WI SMSA										
LESS THAN $200	1.113	1.121	1.129	1.136	1.144	1.090	1.093	1.077	1.078	1.081
200 TO 249	1.103	1.109	1.115	1.121	1.127	1.081	1.081	1.071	1.072	1.073
250 TO 299	1.093	1.097	1.102	1.106	1.111	1.073	1.073	1.063	1.065	1.065
300 TO 349	1.084	1.088	1.093	1.098	1.101	1.064	1.065	1.059	1.060	1.061
350 TO 399	1.075	1.080	1.084	1.089	1.092	1.059	1.060	1.053	1.055	1.057
400 TO 449	1.069	1.073	1.078	1.082	1.086	1.054	1.054	1.049	1.051	1.053
450 TO 499	1.064	1.067	1.071	1.076	1.080	1.049	1.049	1.045	1.047	1.049
500 TO 549	1.058	1.062	1.066	1.071	1.075	1.044	1.045	1.042	1.044	1.046
550 TO 599	1.052	1.057	1.061	1.066	1.070	1.039	1.041	1.042	1.044	1.046
600 OR MORE	1.047	1.052	1.057	1.061	1.066	1.039	1.041	1.042	1.044	1.046

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
MINNEAPOLIS-ST PAUL,MN-WI SMSA										
LESS THAN $200	1.140	1.149	1.159	1.168	1.178	1.110	1.112	1.092	1.094	1.096
200 TO 249	1.127	1.135	1.142	1.150	1.158	1.098	1.099	1.085	1.086	1.087
250 TO 299	1.114	1.120	1.126	1.131	1.137	1.089	1.089	1.077	1.078	1.077
300 TO 349	1.104	1.109	1.115	1.121	1.125	1.079	1.079	1.071	1.072	1.073
350 TO 399	1.093	1.098	1.104	1.110	1.114	1.073	1.073	1.064	1.066	1.068
400 TO 449	1.086	1.090	1.096	1.102	1.106	1.066	1.066	1.060	1.062	1.064
450 TO 499	1.079	1.082	1.088	1.094	1.099	1.060	1.060	1.055	1.057	1.060
500 TO 549	1.071	1.076	1.082	1.088	1.093	1.053	1.055	1.051	1.053	1.055
550 TO 599	1.064	1.070	1.076	1.081	1.087	1.048	1.050	1.051	1.053	1.055
600 OR MORE	1.059	1.064	1.070	1.076	1.081	1.048	1.050	1.051	1.053	1.055
NASSAU-SUFFOLK,NY SMSA										
LESS THAN $200	1.103	1.110	1.117	1.124	1.131	1.072	1.070	1.051	1.048	1.046
200 TO 249	1.094	1.099	1.105	1.111	1.116	1.065	1.063	1.050	1.047	1.045
250 TO 299	1.084	1.089	1.093	1.097	1.101	1.060	1.057	1.046	1.044	1.041
300 TO 349	1.076	1.081	1.085	1.089	1.092	1.053	1.052	1.043	1.042	1.041
350 TO 399	1.068	1.073	1.077	1.081	1.084	1.049	1.047	1.040	1.039	1.039
400 TO 449	1.063	1.067	1.071	1.075	1.079	1.045	1.043	1.037	1.037	1.037
450 TO 499	1.058	1.061	1.065	1.069	1.073	1.041	1.040	1.034	1.034	1.035
500 TO 549	1.053	1.056	1.060	1.065	1.069	1.036	1.036	1.032	1.032	1.032
550 TO 599	1.047	1.052	1.056	1.060	1.064	1.033	1.033	1.032	1.032	1.032
600 OR MORE	1.043	1.047	1.052	1.056	1.060	1.033	1.033	1.032	1.032	1.032
NEW BRUNSWICK-PERTH AMBOY-SAYREVILLE,NJ										
LESS THAN $200	1.103	1.110	1.117	1.124	1.131	1.072	1.070	1.051	1.048	1.046
200 TO 249	1.094	1.099	1.105	1.111	1.116	1.065	1.063	1.050	1.047	1.045
250 TO 299	1.084	1.089	1.093	1.097	1.101	1.060	1.057	1.046	1.044	1.041
300 TO 349	1.076	1.081	1.085	1.089	1.092	1.053	1.052	1.043	1.042	1.041
350 TO 399	1.068	1.073	1.077	1.081	1.084	1.049	1.047	1.040	1.039	1.039
400 TO 449	1.063	1.067	1.071	1.075	1.079	1.045	1.043	1.037	1.037	1.037
450 TO 499	1.058	1.061	1.065	1.069	1.073	1.041	1.040	1.034	1.034	1.035
500 TO 549	1.053	1.056	1.060	1.065	1.069	1.036	1.036	1.032	1.032	1.032
550 TO 599	1.047	1.052	1.056	1.060	1.064	1.033	1.033	1.032	1.032	1.032
600 OR MORE	1.043	1.047	1.052	1.056	1.060	1.033	1.033	1.032	1.032	1.032

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
NEW YORK,NY-NJ SMSA										
LESS THAN $200	1.103	1.110	1.117	1.124	1.131	1.072	1.070	1.051	1.048	1.046
200 TO 249	1.094	1.099	1.105	1.111	1.116	1.065	1.063	1.050	1.047	1.045
250 TO 299	1.084	1.089	1.093	1.097	1.101	1.060	1.057	1.046	1.044	1.041
300 TO 349	1.076	1.081	1.085	1.089	1.092	1.053	1.052	1.043	1.042	1.041
350 TO 399	1.068	1.073	1.077	1.081	1.084	1.049	1.047	1.040	1.039	1.039
400 TO 449	1.063	1.067	1.071	1.075	1.079	1.045	1.043	1.037	1.037	1.037
450 TO 499	1.058	1.061	1.065	1.069	1.073	1.041	1.040	1.034	1.034	1.035
500 TO 549	1.053	1.056	1.060	1.065	1.069	1.036	1.036	1.032	1.032	1.032
550 TO 599	1.047	1.052	1.056	1.060	1.064	1.033	1.033	1.032	1.032	1.032
600 OR MORE	1.043	1.047	1.052	1.056	1.060	1.033	1.033	1.032	1.032	1.032
NEWARK,NJ SMSA										
LESS THAN $200	1.103	1.110	1.117	1.124	1.131	1.072	1.070	1.051	1.048	1.046
200 TO 249	1.094	1.099	1.105	1.111	1.116	1.065	1.063	1.050	1.047	1.045
250 TO 299	1.084	1.089	1.093	1.097	1.101	1.060	1.057	1.046	1.044	1.041
300 TO 349	1.076	1.081	1.085	1.089	1.092	1.053	1.052	1.043	1.042	1.041
350 TO 399	1.068	1.073	1.077	1.081	1.084	1.049	1.047	1.040	1.039	1.039
400 TO 449	1.063	1.067	1.071	1.075	1.079	1.045	1.043	1.037	1.037	1.037
450 TO 499	1.058	1.061	1.065	1.069	1.073	1.041	1.040	1.034	1.034	1.035
500 TO 549	1.053	1.056	1.060	1.065	1.069	1.036	1.036	1.032	1.032	1.032
550 TO 599	1.047	1.052	1.056	1.060	1.064	1.033	1.033	1.032	1.032	1.032
600 OR MORE	1.043	1.047	1.052	1.056	1.060	1.033	1.033	1.032	1.032	1.032
NORTHEAST PENNSYLVANIA, SMSA										
LESS THAN $200	1.089	1.095	1.101	1.107	1.113	1.056	1.051	1.033	1.027	1.023
200 TO 249	1.081	1.086	1.091	1.096	1.100	1.052	1.047	1.033	1.027	1.023
250 TO 299	1.073	1.077	1.080	1.084	1.088	1.048	1.044	1.032	1.027	1.023
300 TO 349	1.066	1.070	1.073	1.077	1.080	1.043	1.040	1.031	1.027	1.023
350 TO 399	1.059	1.063	1.066	1.070	1.072	1.040	1.037	1.029	1.027	1.023
400 TO 449	1.055	1.058	1.061	1.065	1.068	1.037	1.034	1.027	1.026	1.023
450 TO 499	1.050	1.052	1.056	1.060	1.063	1.033	1.031	1.025	1.025	1.023
500 TO 549	1.046	1.049	1.052	1.056	1.059	1.029	1.028	1.023	1.023	1.023
550 TO 599	1.041	1.045	1.048	1.052	1.056	1.026	1.026	1.023	1.023	1.023
600 OR MORE	1.037	1.041	1.045	1.048	1.052	1.026	1.026	1.023	1.023	1.023

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
OXNARD-SIMI VALLEY-VENTURA,CA SMSA										
LESS THAN $200	1.113	1 121	1.128	1.136	1.144	1.110	1.121	1.115	1.125	1.136
200 TO 249	1.103	1.109	1.115	1.121	1.127	1.096	1.104	1.100	1.108	1.116
250 TO 299	1.093	1.097	1.102	1.106	1.111	1.085	1.092	1.087	1.094	1.100
300 TO 349	1.084	1.088	1.093	1.097	1.101	1.075	1.081	1.079	1.085	1.091
350 TO 399	1.075	1.080	1.084	1.089	1.092	1.069	1.073	1.071	1.076	1.083
400 TO 449	1.069	1.073	1.078	1.082	1.086	1.063	1.066	1.065	1.070	1.076
450 TO 499	1.063	1.067	1.071	1.076	1.080	1.056	1.060	1.059	1.064	1.070
500 TO 549	1.058	1.062	1.066	1.071	1.075	1.050	1.055	1.054	1.059	1.064
550 TO 599	1.052	1.057	1.061	1.066	1.070	1.046	1.050	1.054	1.059	1.064
600 OR MORE	1.047	1.052	1.057	1.061	1.066	1.046	1.050	1.054	1.059	1.064
PATTERSON-CLIFTON-PASSAIC,NJ SMSA										
LESS THAN $200	1.103	1.110	1.117	1.124	1.131	1.072	1.070	1.051	1.048	1.046
200 TO 249	1.094	1.099	1.105	1.111	1.116	1.065	1.063	1.050	1.047	1.045
250 TO 299	1.084	1.089	1.093	1.097	1.101	1.060	1.057	1.046	1.044	1.041
300 TO 349	1.076	1.081	1.085	1.089	1.092	1.053	1.052	1.043	1.042	1.041
350 TO 399	1.068	1.073	1.077	1.081	1.084	1.049	1.047	1.040	1.039	1.039
400 TO 449	1.063	1.067	1.071	1.075	1.079	1.045	1.043	1.037	1.037	1.037
450 TO 499	1.058	1.061	1.065	1.069	1.073	1.041	1.040	1.034	1.034	1.035
500 TO 549	1.053	1.056	1.060	1.065	1.069	1.036	1.036	1.032	1.032	1.032
550 TO 599	1.047	1.052	1.056	1.060	1.064	1.033	1.033	1.032	1.032	1.032
600 OR MORE	1.043	1.047	1.052	1.056	1.060	1.033	1.033	1.032	1.032	1.032
PHILADELPHIA,PA-NJ SMSA										
LESS THAN $200	1.102	1.109	1.116	1.123	1.130	1.072	1.070	1.052	1.050	1.048
200 TO 249	1.093	1.099	1.104	1.110	1.115	1.066	1.063	1.050	1.049	1.046
250 TO 299	1.084	1.088	1.092	1.096	1.100	1.060	1.058	1.046	1.045	1.042
300 TO 349	1.076	1.080	1.084	1.088	1.092	1.053	1.052	1.044	1.043	1.042
350 TO 399	1.068	1.072	1.076	1.080	1.083	1.049	1.048	1.040	1.040	1.040
400 TO 449	1.063	1.066	1.070	1.074	1.078	1.045	1.043	1.038	1.038	1.038
450 TO 499	1.057	1.060	1.064	1.069	1.073	1.041	1.040	1.035	1.035	1.035
500 TO 549	1.052	1.056	1.060	1.064	1.068	1.036	1.036	1.032	1.032	1.033
550 TO 599	1.047	1.051	1.055	1.060	1.064	1.033	1.033	1.032	1.032	1.033
600 OR MORE	1.043	1.047	1.051	1.055	1.060	1.033	1.033	1.032	1.032	1.033

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
PITTSBURGH,PA SMSA										
LESS THAN $200	1.090	1.096	1.102	1.108	1.114	1.076	1.081	1.071	1.074	1.078
200 TO 249	1.082	1.086	1.091	1.096	1.101	1.068	1.070	1.064	1.066	1.069
250 TO 299	1.073	1.077	1.081	1.084	1.088	1.061	1.063	1.056	1.059	1.060
300 TO 349	1.066	1.070	1.074	1.077	1.080	1.054	1.056	1.052	1.054	1.056
350 TO 399	1.059	1.063	1.067	1.070	1.073	1.049	1.051	1.047	1.049	1.052
400 TO 449	1.055	1.058	1.062	1.065	1.068	1.045	1.046	1.043	1.045	1.048
450 TO 499	1.050	1.053	1.056	1.060	1.064	1.041	1.042	1.040	1.042	1.044
500 TO 549	1.046	1.049	1.052	1.056	1.060	1.036	1.038	1.036	1.039	1.041
550 TO 599	1.041	1.045	1.048	1.052	1.056	1.033	1.035	1.036	1.039	1.041
600 OR MORE	1.038	1.041	1.045	1.048	1.052	1.033	1.035	1.036	1.039	1.041
PORTLAND,OR-WA SMSA										
LESS THAN $200	1.103	1.110	1.117	1.124	1.131	1.085	1.089	1.077	1.080	1.084
200 TO 249	1.093	1.099	1.105	1.110	1.116	1.076	1.078	1.070	1.072	1.074
250 TO 299	1.084	1.088	1.092	1.097	1.101	1.068	1.070	1.062	1.064	1.065
300 TO 349	1.076	1.080	1.084	1.089	1.092	1.060	1.062	1.057	1.059	1.061
350 TO 399	1.068	1.072	1.076	1.081	1.083	1.056	1.057	1.052	1.054	1.056
400 TO 449	1.063	1.066	1.071	1.075	1.078	1.051	1.051	1.048	1.050	1.053
450 TO 499	1.058	1.060	1.065	1.069	1.073	1.046	1.047	1.044	1.046	1.049
500 TO 549	1.052	1.056	1.060	1.064	1.068	1.041	1.043	1.040	1.042	1.045
550 TO 599	1.047	1.051	1.056	1.060	1.064	1.037	1.039	1.040	1.042	1.045
600 OR MORE	1.043	1.047	1.051	1.056	1.060	1.037	1.039	1.040	1.042	1.045
RIVERSIDE-SAN BERNARDINO-ONTARIO,CA SMSA										
LESS THAN $200	1.113	1.121	1.128	1.136	1.144	1.110	1.121	1.115	1.125	1.136
200 TO 249	1.103	1.109	1.115	1.121	1.127	1.096	1.104	1.100	1.108	1.116
250 TO 299	1.093	1.097	1.102	1.106	1.111	1.085	1.092	1.087	1.094	1.100
300 TO 349	1.084	1.088	1.093	1.097	1.101	1.075	1.081	1.079	1.085	1.091
350 TO 399	1.075	1.080	1.084	1.089	1.092	1.069	1.073	1.071	1.076	1.083
400 TO 449	1.069	1.073	1.078	1.082	1.086	1.063	1.066	1.065	1.070	1.076
450 TO 499	1.063	1.067	1.071	1.076	1.080	1.056	1.060	1.059	1.064	1.070
500 TO 549	1.058	1.062	1.066	1.071	1.075	1.050	1.055	1.054	1.059	1.064
550 TO 599	1.052	1.057	1.061	1.066	1.070	1.046	1.050	1.054	1.059	1.064
600 OR MORE	1.047	1.052	1.057	1.061	1.066	1.046	1.050	1.054	1.059	1.064

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
ST. LOUIS,MO-IL SMSA										
LESS THAN $200	1.080	1.086	1.091	1.097	1.102	1.073	1.078	1.071	1.076	1.081
200 TO 249	1.073	1.077	1.082	1.086	1.090	1.064	1.067	1.063	1.067	1.071
250 TO 299	1.066	1.069	1.072	1.075	1.079	1.057	1.060	1.055	1.059	1.061
300 TO 349	1.059	1.063	1.066	1.069	1.072	1.050	1.053	1.050	1.054	1.056
350 TO 399	1.053	1.056	1.060	1.063	1.065	1.046	1.048	1.045	1.048	1.052
400 TO 449	1.049	1.052	1.055	1.058	1.061	1.042	1.043	1.042	1.045	1.048
450 TO 499	1.045	1.047	1.050	1.054	1.057	1.038	1.040	1.038	1.041	1.044
500 TO 549	1.041	1.044	1.047	1.050	1.053	1.034	1.036	1.035	1.038	1.041
550 TO 599	1.037	1.040	1.043	1.047	1.050	1.031	1.033	1.035	1.038	1.041
600 OR MORE	1.034	1.037	1.040	1.043	1.047	1.031	1.033	1.035	1.038	1.041
SAN DIEGO,CA SMSA										
LESS THAN $200	1.140	1.149	1.159	1.168	1.178	1.114	1.119	1.102	1.105	1.109
200 TO 249	1.127	1.135	1.142	1.150	1.157	1.102	1.104	1.092	1.095	1.098
250 TO 299	1.114	1.120	1.126	1.131	1.137	1.092	1.094	1.082	1.085	1.086
300 TO 349	1.103	1.109	1.115	1.120	1.125	1.081	1.083	1.076	1.079	1.081
350 TO 399	1.093	1.098	1.104	1.110	1.113	1.075	1.076	1.069	1.071	1.075
400 TO 449	1.085	1.090	1.096	1.102	1.106	1.068	1.068	1.064	1.067	1.070
450 TO 499	1.078	1.082	1.088	1.094	1.099	1.062	1.063	1.058	1.061	1.065
500 TO 549	1.071	1.076	1.082	1.087	1.093	1.055	1.057	1.054	1.057	1.060
550 TO 599	1.064	1.070	1.076	1.081	1.087	1.050	1.052	1.054	1.057	1.060
600 OR MORE	1.059	1.064	1.070	1.076	1.081	1.050	1.052	1.054	1.057	1.060
SAN FRANCISCO-OAKLAND,CA SMSA										
LESS THAN $200	1.078	1.084	1.089	1.094	1.100	1.089	1.102	1.102	1.114	1.127
200 TO 249	1.071	1.076	1.080	1.084	1.088	1.076	1.085	1.087	1.097	1.106
250 TO 299	1.064	1.067	1.070	1.074	1.077	1.067	1.075	1.075	1.083	1.090
300 TO 349	1.058	1.061	1.064	1.068	1.070	1.059	1.065	1.067	1.074	1.081
350 TO 399	1.052	1.055	1.058	1.061	1.064	1.053	1.059	1.060	1.066	1.073
400 TO 449	1.048	1.051	1.054	1.057	1.060	1.048	1.053	1.054	1.060	1.066
450 TO 499	1.044	1.046	1.049	1.052	1.056	1.044	1.048	1.049	1.055	1.061
500 TO 549	1.040	1.043	1.046	1.049	1.052	1.039	1.044	1.045	1.050	1.056
550 TO 599	1.036	1.039	1.042	1.046	1.049	1.035	1.040	1.045	1.050	1.055
600 OR MORE	1.033	1.036	1.039	1.042	1.046	1.035	1.040	1.044	1.049	1.054

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SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS
SCHEDULE C - CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

MONTHLY CONTRACT RENT	ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS INCLUDING HIGHEST COST UTILITY					ANNUAL ADJUSTMENT FACTORS FOR CONTRACT RENTS EXCLUDING HIGHEST COST UTILITY				
	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM	0-BEDROOM	1-BEDROOM	2-BEDROOM	3-BEDROOM	4+BEDROOM
SEATTLE-EVERETT, WA SMSA										
LESS THAN $200	1.096	1.102	1.109	1.115	1.122	1.078	1.081	1.068	1.070	1.073
200 TO 249	1.087	1.092	1.098	1.103	1.108	1.069	1.070	1.062	1.064	1.065
250 TO 299	1.078	1.082	1.086	1.090	1.094	1.062	1.064	1.056	1.057	1.057
300 TO 349	1.071	1.075	1.079	1.083	1.086	1.055	1.056	1.051	1.053	1.054
350 TO 399	1.064	1.067	1.071	1.075	1.078	1.051	1.051	1.046	1.048	1.050
400 TO 449	1.059	1.062	1.066	1.070	1.073	1.047	1.046	1.043	1.045	1.047
450 TO 499	1.054	1.056	1.060	1.064	1.068	1.042	1.043	1.040	1.041	1.043
500 TO 549	1.049	1.052	1.056	1.060	1.064	1.037	1.039	1.036	1.038	1.040
550 TO 599	1.044	1.048	1.052	1.056	1.060	1.034	1.035	1.036	1.038	1.040
600 OR MORE	1.040	1.044	1.048	1.052	1.056	1.034	1.035	1.036	1.038	1.040
WASHINGTON D.C.-MD-VA SMSA										
LESS THAN $200	1.117	1.125	1.133	1.141	1.149	1.099	1.104	1.090	1.094	1.099
200 TO 249	1.106	1.113	1.119	1.125	1.132	1.088	1.090	1.081	1.085	1.087
250 TO 299	1.096	1.101	1.105	1.110	1.115	1.079	1.081	1.072	1.075	1.077
300 TO 349	1.087	1.091	1.096	1.101	1.105	1.070	1.072	1.066	1.069	1.071
350 TO 399	1.078	1.082	1.087	1.092	1.095	1.064	1.065	1.060	1.063	1.066
400 TO 449	1.072	1.076	1.080	1.085	1.089	1.058	1.059	1.055	1.058	1.061
450 TO 499	1.066	1.069	1.074	1.078	1.083	1.053	1.054	1.051	1.054	1.057
500 TO 549	1.060	1.064	1.068	1.073	1.078	1.047	1.049	1.047	1.049	1.053
550 TO 599	1.054	1.059	1.063	1.068	1.073	1.042	1.045	1.047	1.049	1.053
600 OR MORE	1.049	1.054	1.059	1.063	1.068	1.042	1.045	1.047	1.049	1.053

Section 8 Housing Assistance Payments Programs

Schedule C—Contract Rent Automatic Annual Adjustment Factors

Note.—The Northeast Census Region includes the following States (and Territories): Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

Note.—The North Central Census Region includes the following States: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

Note.—The South Census Region includes the following States (and the District of Columbia): Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.

Note.—The West Census Region includes the following States: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.

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This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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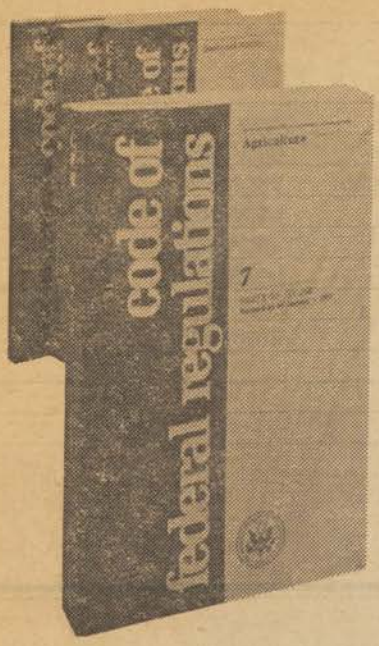
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