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Wednesday
February 3, 1982

Highlights

4979 **Naval Nuclear Propulsion Program** Executive order.

4985 **Social Security** HHS/SSA issues rule on reduction of retroactive benefits.

5178 **Oil and Gas Leasing** Interior/BLM issues notice of proposed Sale 68 in waters offshore Southern California. (Part IV of this issue)

4992 **Water Pollution Control** EPA issues regulations on Underground Injection Control Program.

5063, 5065 **Treasury Notes** Treasury announces interest rate on Series L-1985 and A-1992. (2 documents)

5066 **Treasury Bonds** Treasury announces interest on Treasury Bonds of 2006-2011.

5004 **Geothermal Energy** Interior/BLM amends regulations to provide for leasing of fractional or future interests in geothermal resources.

5042 **Grant Programs—Family Planning** HHS/HSA solicits applications for general family planning training project grant in Region VIII.

5041 **Loan Programs—Education** HHS/HSA announces interest rates on Health Education Assistance Loans.

CONTINUED INSIDE

Highlights

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There are no restrictions on the republication of material appearing in the **Federal Register.**

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.

4989 **Drug Traffic Control** Justice authorizes the Director of the Federal Bureau of Investigation to supervise functions of the Drug Enforcement Administration in the enforcement of criminal drug laws.

5010 **Nuclear Power Plants** NRC proposes to incorporate new sections of ASME Boiler and Pressure Vessel Code in its codes and standards.

5097 **Wilderness Areas** Interior/BLM announces availability of Final Wilderness Study Policy. (Part II of this issue)

5026 **Countervailing Duties** Commerce/ITA issues notice on float glass from Italy.

ITC issues notices on the following:
5057 Molasses from France.
5058 Sugar from the European Communities.

5028 **Imports—Antidumping** Commerce/ITA issues notice on certain steel wire nails from the Republic of Korea.

5055 ITC issues notice on fireplace mesh panels from Taiwan.

5024 **Privacy Act Documents** USDA

5069 **Sunshine Act Meetings**

Separate Parts of This Issue

5097 **Part II, Interior/BLM**
5124 **Part III, USDA/AMS**
5177 **Part IV, Interior/BLM**

Contents

Federal Register
Vol. 47, No. 23
Wednesday, February 3, 1982

The President
EXECUTIVE ORDERS
4979 Naval Nuclear Propulsion Program (EO 12344)

Executive Agencies

Agency for International Development
NOTICES
Authority delegations:
5054 Deputy Administration et al.; order of succession as Acting Administrator

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
5124 Alabama-West Florida

Agriculture Department
See also Agricultural Marketing Service; Federal Crop Insurance Corporation.
NOTICES
5024 Privacy Act; systems of records

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
5011 Isle St. George, Ohio

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
5059 Beven-Herron, Inc., et al.

Army Department
See also Engineers Corps.
NOTICES
Meetings:
5031 Historical Advisory Committee

Arts and Humanities, National Foundation
NOTICES
Meetings:
5061 Theater Advisory Panel

Centers for Disease Control
NOTICES
Meetings:
5041 Biomechanical stress, minimization; handle placement on containers

Civil Aeronautics Board
RULES
4982 Aircraft accident liability insurance; editorial amendment
NOTICES
Hearings, etc.:
5026 Best Airlines fitness investigation
5025 Cape Smythe Air Service, Inc.
5025 Channel Flying, Inc.
5025 Hermens Air, Inc.
5026 Tyee Airlines
5069 Meetings; Sunshine Act (4 documents)

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
5026 District of Columbia

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Customs Service
RULES
Organization and functions; field organization; ports of entry, etc.:
4985 Houston-Galveston, Tex.; port limits description; correction
NOTICES
Trade name recordation applications:
5063 Bristol-Myers Co.
5063 Clairol Inc.

Defense Department
See Army Department; Engineers Corps; Navy Department.

Economic Regulatory Administration
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
5034 New Energy Corp. of Indiana
Remedial orders:
5033 Mobil Oil Corp.

Energy Department
See Economic Regulatory Administration; Energy Research Office.

Energy Research Office
NOTICES
Meetings:
5035 High Energy Physics Advisory Panel

Engineers Corps
RULES
Danger zones:
4990 California; Pacific Ocean at San Miquel Island
NOTICES
Environmental statements; availability, etc.:
5031 Pointe Mouillee, Mich.; confined disposal facility; proposed wetland establishment project; notice of intent to prepare draft supplement

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
4991 Indiana
Permit programs, consolidated, etc.:
4992 State underground injection control program criteria and standards; final rule and request for comments

Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
5001, 5002 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate (2 documents)
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
5015 Illinois
5014 New Jersey
NOTICES
Air quality; prevention of significant deterioration (PSD):
5036 Permit approvals
Meetings:
5036 State FIFRA Issues Research and Evaluation Group
Pesticides; tolerances in animal feeds and human food:
5035 BASF Wyandotte Corp.

Equal Employment Opportunity Commission
NOTICES
Senior Executive Service:
5036 Performance awards schedule

Federal Communications Commission
NOTICES
5069–5071 Meetings; Sunshine Act (3 documents)

Federal Crop Insurance Corporation
NOTICES
5071 Meetings; Sunshine Act

Federal Deposit Insurance Corporation
NOTICES
5071, 5072 Meetings; Sunshine Act (2 documents)

Federal Emergency Management Agency
PROPOSED RULES
Flood elevation determinations:
5016 Florida et al.

Federal Maritime Commission
NOTICES
5037 Agreements filed, etc.
5072 Meetings; Sunshine Act

Federal Reserve System
RULES
Authority delegations:
4981 Consumer and Community Affairs Division, Director; issuance of consumer compliance materials
NOTICES
Applications, etc.:
5039 Community Bancshares, Inc.
5039 Deutsche Bank AG
5040 First Carrollton Bancshares, Inc.
5040 Lewellen National Corp.
5040 Merchants Corp.
5041 Union Bancorp of West Virginia, Inc.
5041 Walnut Valley Corp.
Bank holding companies; proposed de novo nonbank activities:
5038 Chemical New York Corp. et al.
5072 Meetings; Sunshine Act

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
5048 Matagorda Island, Tex.; disposition of 19,000 acres of Federal property; notice of intent

General Services Administration
NOTICES
Environmental statements; availability, etc.:
5048 Matagorda Island, Tex.; disposition of 19,000 acres of Federal property; notice of intent

Health and Human Services Department
See Health Care Financing Administration; Health Services Administration; National Institutes of Health; Social Security Administration.

Health Care Financing Administration
NOTICES
Hearings:
5047 Medicaid program; Reconsideration of Disapproval of Minnesota State Plan

Health Services Administration
NOTICES
Grants; availability, etc.:
5042 General family planning training
5041 Health education assistance loan (HEAL) program; interest rates

Indian Affairs Bureau
NOTICES
5048 Indian tribes, acknowledgment of existence; petitions

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office.

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Antidumping:
5028 Steel wire nails from Korea
Countervailing duties:
5026 Float glass from Italy
Meetings:
5028 Telecommunications Equipment Technical Advisory Committee

International Trade Commission
NOTICES
Import investigations:
5055 Drycleaning machinery from West Germany
5055 Fireplace mesh panels from Taiwan
5056 Hot air corn poppers and components
5058 Power woodworking tools, accessories and parts
5056 Modular pushbutton switches and components
5057 Molasses from France
5058 Sugar from European communities

Interstate Commerce Commission
RULES
Practice and procedure:
5006 Rail service continuation subsidies standards in Northeast-Midwest region; apportionment of train supplies and expenses on a loaded freight train basis
Railroad car service orders; various companies:
5006 Oklahoma, Kansas & Texas Railroad Co.
NOTICES
Motor carriers:
5051 Finance applications
5052 Permanent authority applications
5053 Permanent authority applications; restriction removals
Railroad operation, acquisition, construction, etc.:
5054 Diamond Shamrock Corp.

Justice Department
See also Antitrust Division.
RULES
Organization, functions, and authority delegations:
4989 Federal Bureau of Investigation, Director, et al.; investigation of criminal drug laws violations

Land Management Bureau
RULES
5004 Geothermal resources; future or fractional interest leases, etc.
Public land orders:
5003 Montana (2 documents)
NOTICES
Alaska native claims selections; applications, etc.:
5049 Cook Inlet Region, Inc.
Coal leases, exploration licenses, etc.:
5050 Oregon and Washington
Exchange of public lands for private land:
5049 Montana
Outer Continental Shelf; oil and gas lease sales:
5178 Southern California
Survey plat filings:
5050 Minnesota
5098 Wilderness study policy, final; policies, criteria and guidelines for conducting wilderness studies on public lands; availability
Withdrawal and reservation of lands, proposed, etc.:
5050 Wyoming

National Institutes of Health
NOTICES
Meetings:
5042 Animal Resources Review Committee
5045 Arthritis, Diabetes, and Digestive and Kidney Diseases National Advisory Council
5043 Biotechnology Resources Review Committee
5043 Bladder and Prostatic Cancer Review Committee
5043 Cancer Institute, National; Scientific Counselors Board
5044 General Research Support Review Committee
5044 Genetic Basis of Disease Review Committee
5044 Heart, Lung, and Blood Institute, National; Clinical Applications and Prevention Advisory Committee
5045 Maternal and Child Health Research Committee
5045 Minority Access to Research Careers Review Committee
5046 Pharmacological Sciences Review Committee
5046 Population Research Committee
5046 Research Resources National Advisory Council

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
5008 Tanner crab off Alaska; closure of Southern District in Registration Area H
NOTICES
Meetings:
5031 New England Fishery Management Council
5031 South Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council

National Park Service
NOTICES
Historic Places National Register; pending nominations:
5051 North Carolina
5051 Ohio

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
4989 USS Dolphin
NOTICES
Environmental statements; availability, etc.:
5033 Feral animal removal program, San Clemente Island, Calif.
5032 Feral Burro management, Naval Weapons Center, China Lake, Calif.

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities, domestic licensing:
5010 Codes and standards for nuclear power plants; ASME boiler and pressure vessel code; construction and inservice inspection of components; incorporation by reference
5010 Rulemaking petitions; issuance of quarterly report, availability
NOTICES
Applications, etc.:
5061 Duquesne Light Co. et al.
5061 Virginia Electric & Power Co.

Postal Service
NOTICES
5072 Meetings; Sunshine Act

Securities and Exchange Commission
RULES
4982 Reporting and recordkeeping requirements; correction

Small Business Administration
RULES
Organization, functions, and authority delegations:
4981 Central Office; correction
NOTICES
Applications, etc.:
5062 Bache Small Business Lending Corp.
Disaster areas:
5062 Mississippi

Social Security Administration
RULES
Social security benefits and supplemental security income:
4985 Retroactive benefits, reduction

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission; various States:
5013 Virginia

Trade Representative, Office of United States
NOTICES
Import controls:
5062 Coffee from non-members of International Coffee Agreement

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Customs Service.
NOTICES
Bonds, Treasury:
5066 2006–2011 series
Notes, Treasury:
5065 A–1992 series
5063 L–1985 series

MEETINGS ANNOUNCED IN THIS ISSUE

ARTS AND HUMANITIES, NATIONAL FOUNDATION
5061 Theater Advisory Panel (Policy), Washington, D.C. (open), 2–17 and 2–18–82

CIVIL RIGHTS COMMISSION
5026 District of Columbia Advisory Committee, Washington, D.C. (open), 2–18–82

COMMERCE DEPARTMENT
International Trade Administration—
5028 Telecommunications Equipment Technical Advisory Committee, Fiber Optic Subcommittee, Washington, D.C. (closed), 2–9–82
National Oceanic and Atmospheric Administration—
5031 New England Fishery Management Council, Danvers, Mass. (open), 2–24 and 2–25–82
5031 South Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council (Inter-Council/Advisory Panel), Merrit Island, Fla. (open), 3–1 and 3–2–82

DEFENSE DEPARTMENT
Army Department—
5031 Historical Advisory Committee, Washington, D.C. (open), 4–23–82

ENERGY DEPARTMENT
Energy Research Office—
5035 High Energy Physics Advisory Panel, Germantown, Md. (open), 2–19 and 2–20–82

ENVIRONMENTAL PROTECTION AGENCY
5036 State FIFRA Issues Research and Evaluation Group (SFIREG), Arlington, Va. (open), 3–4–82

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Disease Control—
5041 Handle Placement on Containers to Minimize Biomechanical Stress, Morgantown, W. Va. (open), 2–11–82
National Institutes of Health—
5042 Animal Resources Review Committee, Primate Research Centers (conference call), Bethesda, Md. (closed), 2–8–82
5043 Biotechnology Resources Review Committee (conference call), Bethesda, Md., 2–4–82
5043 Bladder and Prostatic Cancer Review Committee, Prostatic Subcommittee, Buffalo, N.Y. (open), 2–22–82
5043 Board of Scientific Counselors, Division of Cancer Treatment, Houston, Tex. (open), 2–8 and 2–9–82
5044 Clinical Applications and Prevention Advisory Committee, Bethesda, Md. (open), 3–18 and 3–19–82
5044 General Research Support Review Committee, Bethesda, Md. (partially open), 3–18 and 3–19–82
5044 Genetic Basis of Disease Review Committee, Bethesda, Md. (partially open), 3–19–82
5045 Maternal and Child Health Research Committee, Bethesda, Md. (partially open), 3–15 and 3–16–82
5045 Minority Access to Research Careers Review Committee, Bethesda, Md. (partially open), 3–8 and 3–9–82
5046 National Advisory Research Resources Council, Bethesda, Md. (partially open), 2–8 and 2–9–82
5045 National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council, Bethesda, Md. (partially open), 2–10 through 2–12–82
5046 Pharmacological Sciences Review Committee, Bethesda, Md. (partially open), 3–11 and 3–12–82
5046 Population Research Committee, Bethesda, Md. (partially open), 3–11 and 3–12–82

HEARINGS

Health and Human Services Department—
5047 Health Care financing Administration—Medicaid, reconsideration of disapproval of Minnesota State plan amendments, Chicago, Ill., 3–24–82

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12344 4979

7 CFR
Proposed Rules:
1093 5124

10 CFR
Proposed Rules:
Ch. I 5010
50 5010

12 CFR
265 4981

13 CFR
101 4981

14 CFR
205 4982

17 CFR
200 4982

19 CFR
101 4985

20 CFR
404 4985
416 4985

27 CFR
Proposed Rules:
9 5011

28 CFR
0 4989

30 CFR
Proposed Rules:
946 5013

32 CFR
706 4989

33 CFR
204 4990

40 CFR
52 4991
122 4992
146 4992
180 (2 documents) 5001, 5002

Proposed Rules:
52 (2 documents) 5014, 5015

43 CFR
3200 5004
Public Land Orders:
5952 (Revoked by P.L.O. 6126) 5003
6104 5003
6126 5003

44 CFR
Proposed Rules:
67 5016

49 CFR
1033 5006
1125 5006

50 CFR
671 5008

Federal Register
Vol. 47, No. 23
Wednesday, February 3, 1982

Presidential Documents

Title 3—

The President

Executive Order 12344 of February 1, 1982

Naval Nuclear Propulsion Program

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States of America, with recognition of the crucial importance to national security of the Naval Nuclear Propulsion Program, and for the purpose of preserving the basic structure, policies, and practices developed for this Program in the past and assuring that the Program will continue to function with excellence, it is hereby ordered as follows:

Section 1. The Naval Nuclear Propulsion Program is an integrated program carried out by two organizational units, one in the Department of Energy and the other in the Department of the Navy.

Sec. 2. Both organizational units shall be headed by the same individual so that the activities of each may continue in practice under common management. This individual shall direct the Naval Nuclear Propulsion Program in both departments. The director shall be qualified by reason of technical background and experience in naval nuclear propulsion. The director may be either a civilian or an officer of the United States Navy, active or retired.

Sec. 3. The Secretary of the Navy (through the Secretary of Defense) and the Secretary of Energy shall obtain the approval of the President to appoint the director of the Naval Nuclear Propulsion Program for their respective Departments. The director shall be appointed to serve a term of eight years, except that the Secretary of Energy and the Secretary of the Navy may, with mutual concurrence, terminate or extend the term of the respective appointments.

Sec. 4. An officer of the United States Navy appointed as director shall be nominated for the grade of Admiral. A civilian serving as director shall be compensated at a rate to be specified at the time of appointment.

Sec. 5. Within the Department of Energy, the Secretary of Energy shall assign to the director the responsibility of performing the functions of the Division of Naval Reactors transferred to the Department of Energy by Section 309(a) of the Department of Energy Organization Act (42 U.S.C. 7158), including assigned civilian power reactor programs, and any naval nuclear propulsion functions of the Department of Energy, including:

(a) direct supervision over the Bettis and Knolls Atomic Power Laboratories, the Expended Core Facility and naval reactor prototype plants;

(b) research, development, design, acquisition, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto;

(c) the safety of reactors and associated navel nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public;

(d) training, including training conducted at the naval prototype reactors of the Department of Energy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director

and of personnel who supervise, operate, or maintain naval nuclear propulsion plants; and

(e) administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics, and fiscal management.

Sec. 6. Within the Department of Energy, the director shall report to the Secretary of Energy, through the Assistant Secretary assigned nuclear energy functions and shall serve as a Deputy Assistant Secretary. The director shall have direct access to the Secretary of Energy and other senior officials in the Department of Energy concerning naval nuclear propulsion matters, and to all other personnel who supervise, operate or maintain naval nuclear propulsion plants and support facilities for the Department of Energy.

Sec. 7. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility to supervise all technical aspects of the Navy's nuclear propulsion work, including:

(a) research, development, design, procurement, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto; and

(b) training programs, including Nuclear Power Schools of the Navy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of Government personnel who supervise, operate, or maintain naval nuclear propulsion plants.

Sec. 8. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility within the Navy for:

(a) the safety of reactors and associated naval nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public.

(b) administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics, and fiscal management.

Sec. 9. In addition to any other organizational assignments within the Department of the Navy, the director shall report directly to the Chief of Naval Operations. The director shall have direct access to the Secretary of the Navy and other senior officials in the Department of the Navy concerning naval nuclear propulsion matters, and to all other Government personnel who supervise, operate, or maintain naval nuclear propulsion plants and support facilities.

Sec. 10. This Order is effective on February 1, 1982.

Ronald Reagan

THE WHITE HOUSE,
February 1, 1982.

[FR Doc. 82-2955
Filed 2-1-82; 4:33 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 47, No. 23
Wednesday, February 3, 1982

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0384]

Delegation of Authority To Issue Consumer Compliance Materials

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its "Rules Regarding Delegation of Authority" in order to delegate to the Director of its Division of Consumer and Community Affairs, the authority to issue examination or inspection manuals, report, agreements, and examination forms, guidelines, instructions or other similar materials, in consultation with the Board's Legal Division where appropriate, for use in connection with several laws and regulations that are part of the Board's Consumer Affairs and Civil Rights Compliance Program.

EFFECTIVE DATE: January 28, 1982.

FOR FURTHER INFORMATION CONTACT: Glenn E. Loney, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3946).

SUPPLEMENTARY INFORMATION: (1) The Board's action delegates the authority to the Director of the Division of Consumer and Community Affairs to issue examination or inspection manuals, report, agreement, and examination forms, guidelines, instructions or other similar materials, in consultation with the Legal Division where appropriate, for use in connection with: Regulation E (Electronic Fund Transfer); Regulation H (Membership of State Banking Institutions in the Federal Reserve System); Regulation Q (Interest on Deposits); Regulation BB (Community Reinvestment); and, the Fair Debt Collection Practices Act.

(2) The Board finds that the notice, public participation and deferral of effective date provisions of 5 U.S.C. 553(b) are unnecessary in connection with this proceeding because it relates to agency procedures. For the same reasons, the expanded rule-making procedures set forth in the Board's policy statements of January 1979 (44 FR 3957) will not be followed in connection with this proceeding.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

(3) Pursuant to the provisions of Section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)), the Board amends 12 CFR 265.2 by amending paragraph (h)(1) by revising (h)(1) introductory text, (h)(1)(i) and (h)(1)(ii) and adding (h)(1)(v) through (h)(1)(vii), effective immediately to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(h) * * *

(1) Pursuant to the provisions of section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), sections 108(b), 621(c), 704(b), 814(c) and 917(b) of the Consumer Credit Protection Act (15 U.S.C. 1607(b), 1681s(c), 1691c(b), 1692l(c), and 1693o(b), section 305(c) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(c)), section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3), section 808(c) of the Civil Rights Act of 1968 (42 U.S.C. 3608(c)), and section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)), to issue examination or inspection manuals, report, agreement, and examination forms, guidelines, instructions or other similar materials, in consultation with the Board's Legal Division where appropriate, for use in connection with:

(i) Sections 1 through 921 (excluding sections 201 through 500) of the Consumer Credit Protection Act (15 U.S.C. 1601-1693r).

(ii) Sections 301 through 312 of the Home Mortgage Disclosure Act (12 U.S.C. 2801-2811).

(iii) * * *

(iv) * * *

(v) Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(a)) and Sections 105(b) and 202(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b) and 4106(b)).

(vi) Section 19(j) of the Federal Reserve Act (12 U.S.C. 371b).

(vii) Sections 801-806 of the Community Reinvestment Act (12 U.S.C. 2901-2905).

* * * * *

Board of Governors of the Federal Reserve System, January 28, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-2824 Filed 2-2-82; 8:45 am]
BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 21]

Organization and Functions; Update; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: This submission replaces in its entirety § 101.2-4 as it appeared in a final rule on organization of the Central Office of the Small Business Administration published in the **Federal Register** on January 14, 1982 (47 FR 2075). It serves only to show the complete functions of the Office of Equal Employment Opportunity and Compliance.

FOR FURTHER INFORMATION CONTACT: Amos B. Cheeseboro, Office of Personnel Services, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, (202) 653-5293.

5 CFR 101.2-4 is corrected to read as follows:

PART 101—ADMINISTRATION

* * * * *

§ 101.2-4 Office of Equal Employment Opportunity and Compliance.

Develops and recommends policies concerning the Equal Employment Opportunity and Compliance (EEO & C) programs. Develops plans, operating procedures and standards to effectively strengthen and improve the Agency's civil rights, equal employment opportunity and compliance programs and activities. Administers the Agency's discrimination complaint process. Serves as principal liaison with other

Federal agencies and nonfederal organizations concerned with civil rights. Directs, coordinates and administers compliance programs and activities executed by Central Office staff. Provides advice, assistance and support to the Administrator in relation to the EEO & C program. The Director, Office of EEO & C serves as the Agency's equal employment opportunity officer, civil rights coordinator, compliance officer and as the Administrator's designee in making the final decision on discrimination complaints and ordering corrective measures, except when otherwise specified by the Administrator.

Dated: January 28, 1982.

Michael Cardenas,

Administrator.

[FR Doc. 82-2837 Filed 2-2-82; 8:45 am]

BILLING CODE 8025-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 205

[ER-1282; Amdt. No. 1]

Aircraft Accident Liability Insurance

AGENCY: Civil Aeronautics Board.

ACTION: Rule; editorial amendment.

SUMMARY: This rule makes an editorial correction in the Board's rules requiring disclosure by U.S. and foreign direct air carriers of the presence or absence of cargo liability insurance covering a shipment on their aircraft.

DATES: Effective: January 29, 1982. Adopted: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: When the Board adopted a new 14 CFR Part 205, setting requirements for minimum insurance requirements for airlines (ER-1253; 46 FR 52572, October 27, 1981), it required in § 205.8 that every U.S. and foreign direct air carrier disclose to shippers the presence or absence of cargo liability "accident insurance." As shown in the notice of proposed rulemaking (EDR-395, 45 FR 7566, February 4, 1980) and in the discussion of ER-1253 in its preamble, the intent of the Board was to require the disclosure of cargo liability insurance, not of accident insurance. The word "accident" was placed in § 205.8 by mistake.

In order to prevent confusion and to follow the Board's intent, the word "accident" is removed from § 205.8.

PART 205—AIRCRAFT ACCIDENT LIABILITY INSURANCE

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 205, *Aircraft Accident Liability Insurance*, as follows:

1. The authority for Part 205 is:

Authority: Secs. 204, 401, 403, 416, 418, 419, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 758, 771; 91 Stat. 1284; 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1373, 1386, 1388, 1389.

2. § 205.8 is revised to read:

§ 205.8 Cargo liability disclosure statement.

Every direct U.S. or foreign air carrier providing air cargo service in air transportation shall give notice in writing to the shipper, when a shipment is accepted, of the existence or absence of cargo liability insurance, if any. The notice shall be clearly and conspicuously included on or attached to all of its rate sheets and airwaybills.

By the Civil Aeronautics Board.

David M. Kirstein,

General Counsel.

[FR Doc. 82-2833 Filed 2-2-82; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6369A; 34-18353A; 35-22331A; 39-681A; IC-12117A; and IA-788A]

Paperwork Reduction Act; Office of Management and Budget Control Numbers Assigned to Information Collection Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission is republishing in its entirety a release amending Title 17, Chapter II, of the Code of Federal Regulations to add a new subpart N, which contains a listing of Office of Management and Budget control numbers assigned to information collection requirements of the Commission. The release as here republished corrects a number of minor errors that appeared in the original publication of the release. *See* 46 FR 63036 (December 30, 1981). This amendment is administrative in nature and is intended to comply with the requirements of section 3507(f) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement. In particular, the new subpart collects and displays current OMB control numbers and expiration dates of those information collection requirements of the Commission which are rules and regulations and codified in 17 CFR either in full text or incorporated by reference with the approval of the Director of the Office of the Federal Register. Where the information collection requirement also exists as a separate document, as, for example, an information collection requirement which the Commission incorporates by reference in 17 CFR, the Commission, of course, will also display on the separate document as well the current OMB control number and the expiration date as required by section 3507(f).

EFFECTIVE DATE: December 30, 1981.

FOR FURTHER INFORMATION CONTACT: George G. Kundahl, Executive Director, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2700.

SUPPLEMENTARY INFORMATION: Accordingly, Subpart N in Part 200 of 17 CFR Chapter II is corrected to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers and Expiration Dates

Authority: 44 U.S.C. 3507(f).

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart collects and displays the control numbers and expiration dates assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement. In particular, this subpart displays current OMB control numbers and expiration dates of those information collection requirements of the Commission which are rules and regulations and codified in 17 CFR either in full text or incorporated by reference with the approval of the Director of the Office of the Federal Register. Where the information collection requirement

also exists as a separate document, as, for example, an information collection requirement which the Commission incorporates by reference in 17 CFR, the Commission, of course, will display on the separate document as well the current OMB control number and the expiration date as required by section 3507(f). Henceforth, the Commission will publish in the **Federal Register** only additions, deletions and corrections to particular control numbers and expiration dates contained in this subpart.

(b) *Display.*

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
Regulation S-X	Part 210	3235-0009	Dec. 31, 1982.
Regulation S-K	Part 229	3235-0071	June 30, 1982.
Rule 236	§ 230.236	3235-0095	Nov. 30, 1983.
Rule 242	§ 230.242	3235-0099	Nov. 30, 1984.
Regulation A	§§ 230.251 through 230.264.	3235-0096	Sept. 30, 1982.
Regulation B	§§ 230.300 through 230.346.	3235-0093	Oct. 31, 1983.
Regulation C	§§ 230.400 through 230.494.	3235-0074	June 30, 1982.
Regulation D proposed.	§§ 230.501 through 230.506.	3235-0076	June 30, 1982.
Rule 604	§ 230.604	3235-0232	Dec. 31, 1984.
Rule 605	§ 230.605	3235-0232	Dec. 31, 1984.
Rule 606	§ 230.606	3235-0232	Dec. 31, 1984.
Rule 607	§ 230.607	3235-0232	Dec. 31, 1984.
Rule 609	§ 230.609	3235-0232	Dec. 31, 1984.
Regulation F	§§ 230.651 through 230.656.	3235-0094	Oct. 31, 1984.
Form C-3	§ 239.5	3235-0112	Nov. 30, 1984.
Form S-1	§ 239.11	3235-0065	June 30, 1982.
Form S-1 proposed.	§ 239.11	3235-0065	June 30, 1982.
Form S-2	§ 239.12	3235-0075	June 30, 1982.
Form S-2 proposed.	§ 239.12	3235-0072	June 30, 1982.
Form S-3 proposed.	§ 239.13	3235-0073	June 30, 1982.
Form S-6	§ 239.16	3235-0184	Aug. 31, 1982.
Form S-8	§ 239.16b	3235-0066	June 30, 1982.
Form S-11	§ 239.18	3235-0067	June 30, 1982.
Form S-12	§ 239.19	3235-0112	Nov. 30, 1984.
Form S-14	§ 239.23	3235-0052	Oct. 31, 1984.
Form S-7	§ 239.26	3235-0055	June 30, 1982.
Form S-16	§ 239.27	3235-0077	June 30, 1982.
Form S-18	§ 239.28	3235-0098	Sept. 30, 1982.
Form S-15	§ 239.29	3235-0053	Oct. 31, 1984.
Form F-1 proposed.	§ 239.31	3235-0258	Dec. 31, 1984.
Form F-2 proposed.	§ 239.32	3235-0257	Dec. 31, 1984.
Form F-3 proposed.	§ 239.33	3235-0256	Dec. 31, 1984.
Form SR	§ 239.61	3235-0124	Nov. 30, 1984.
Form 1-A	§ 239.90	3235-0096	Sept. 30, 1982.
Form 2-A	§ 239.91	3235-0096	Sept. 30, 1982.
Form 3-A	§ 239.92	3235-0096	Sept. 30, 1982.
Form 4-A	§ 239.93	3235-0096	Sept. 30, 1982.
Form 5-A	§ 239.94	3235-0096	Sept. 30, 1982.
Form 6-A	§ 239.95	3235-0096	Sept. 30, 1982.
Form 7-A	§ 239.96	3235-0096	Sept. 30, 1982.
Schedules A, B, C, D.	§ 239.101	3235-0093	Oct. 31, 1983.
Form 1-G	§ 239.101	3235-0093	Oct. 31, 1983.
Form 3-G	§ 239.101	3235-0093	Oct. 31, 1983.
Form 144	§ 239.144	3235-0101	Nov. 30, 1983.
Form 237	§ 239.145	3235-0263	Jan. 31, 1984.
Form 146	§ 239.146	3235-0005	Aug. 31, 1983.
Form 1-E	§ 239.200	3235-0232	Dec. 31, 1984.
Form 2-E	§ 239.201	3235-0233	Dec. 31, 1984.
Form 240	§ 239.240	3235-0100	Nov. 30, 1984.
Form 242	§ 239.242	3235-0099	Nov. 30, 1984.
Form 1-F	§ 239.300	3235-0094	Oct. 31, 1984.
Form D proposed.	§ 239.500	3235-0076	June 30, 1982.
Rule 6a-1	§ 240.6a-1	3235-0017	Aug. 31, 1983.
Rule 6a-2	§ 240.6a-2	3235-0022	Aug. 31, 1983.
Rule 6a-3	§ 240.6a-3	3235-0021	Aug. 31, 1983.
Rule 10b-7	§ 240.10b-7	3235-0208	Oct. 31, 1983.
Rule 11Ab2-1.	§ 240.11Ab2-1.	3235-0043	Sept. 30, 1984.
Rule 12a-5	§ 240.12a-5	3235-0079	Oct. 31, 1984.
Regulation 12B.	§§ 240.12b-1 through 240.12b-36.	3235-0062	Oct. 31, 1984.
Rule 12d1-3	§ 240.12d1-3	3235-0109	Nov. 30, 1984.
Rule 12d2-1	§ 240.12d2-1	3235-0081	Oct. 31, 1984.
Rule 12d2-2	§ 240.12d2-2	3235-0080	Oct. 31, 1984.
Rule 12f-1	§ 240.12f-1	3235-0128	Nov. 30, 1984.
Rule 12f-2	§ 240.12f-2	3235-0248	Nov. 30, 1984.
Rule 12f-3	§ 240.12f-3	3235-0249	Dec. 31, 1984.
Rule 12g3-2	§ 240.12g3-2	3235-0119	Nov. 30, 1984.
Rule 13a-17	§ 240.13a-17	3235-0191	Dec. 31, 1984.
Regulation 13D/G.	§§ 240.13d-1 through 240.13d-7.	3235-0145	Aug. 31, 1982.
Schedule 13D.	§ 240.13d-101.	3235-0145	Aug. 31, 1982.
Schedule 13G.	§ 240.13d-102.	3235-0145	Aug. 31, 1982.
Rule 13e-1	§ 240.13e-1	3235-0262	Mar. 31, 1982.
Rule 13e-3	§ 240.13e-3	3235-0007	June 30, 1983.
Rule 13e-4	§ 240.13e-4	3235-0203	Aug. 31, 1982.
Schedule 13E-3.	§ 240.13e-100.	3235-0007	June 30, 1983.
Schedule 13E-4.	§ 240.13e-101.	3235-0203	Aug. 31, 1982.
Regulation 14A.	§§ 240.14a-1 through 240.14a-12.	3235-0059	Oct. 31, 1984.
Schedule 14A.	§ 240.14a-101.	3235-0059	Oct. 31, 1984.
Schedule 14B.	§ 240.14a-102.	3235-0059	Oct. 31, 1984.
Regulation 14C.	§ 240.14c-1	3235-0057	Oct. 31, 1984.
Schedule 14C.	§ 240.14c-101.	3235-0057	Oct. 31, 1984.
Regulation 14D.	§§ 240.14d-1 through 240.14d-9.	3235-0102	Nov. 30, 1983.
Schedule 14D-1.	§ 240.14d-100.	3235-0102	Nov. 30, 1983.
Schedule 14D-9.	§ 240.14d-101.	3235-0102	Nov. 30, 1983.
Regulation 14E.	§§ 240.14e-1 through 240.14e-2.	3235-0102	Nov. 30, 1983.
Rule 14f-1	§ 240.14f-1	3235-0108	Nov. 30, 1984.
Rule 15a-4(a).	§ 240.15a-4(a).	3235-0010	Aug. 31, 1983.
Rule 15Aa-1	§ 240.15Aa-1.	3235-0030	Sept. 30, 1984.
Rule 15Aj-1	§ 240.15Aj-1	3235-0044	Sept. 30, 1984.
Rule 15b1-1	§ 240.15b1-1	3235-0012	Aug. 31, 1983.
Rule 15b1-2	§ 240.15b1-2	3235-0020	Aug. 31, 1983.
Rule 15b1-3	§ 240.15b1-3	3235-0011	Aug. 31, 1983.
Rule 15b1-4	§ 240.15b1-4	3235-0016	Aug. 31, 1983.
Rule 15b2-1	§ 240.15b2-1	3235-0014	Aug. 31, 1983.
Rule 15b3-1	§ 240.15b3-1	3235-0013	Aug. 31, 1983.
Rule 15b6-1(a).	§ 240.15b6-1(a).	3235-0018	Aug. 31, 1983.
Rule 15b8-1	§ 240.15b8-1	3235-0135	Nov. 30, 1984.
Rule 15b9-1(a) and (b).	§ 240.15b9-1(a) and (b).	3235-0129	Nov. 30, 1984.
Rule 15b9-1(c).	§ 240.15b9-1(c).	3235-0139	Nov. 30, 1984.
Rule 15b9-2	§ 240.15b9-2	3235-0146	Nov. 30, 1984.
Rule 15b10-6.	§ 240.15b10-6.	3235-0188	Sept. 30, 1982.
Rule 15b10-8.	§ 240.15b10-8.	3235-0189	Dec. 31, 1984.
Rule 15b10-9.	§ 240.15b10-9.	3235-0091	Oct. 31, 1984.
Rule 15b10-11.	§ 240.15b10-11.	3235-0190	Dec. 31, 1984.
Rule 15Ba2-1.	§ 240.15Ba2-1.	3235-0083	Oct. 31, 1984.
Rule 15Ba2-2.	§ 240.15Ba2-2.	3235-0090	Oct. 31, 1984.
Rule 15Ba2-4.	§ 240.15Ba2-4.	3235-0089	Oct. 31, 1984.
Rule 15Ba2-5.	§ 240.15Ba2-5.	3235-0088	Oct. 31, 1984.
Rule 15Ba2-6.	§ 240.15Ba2-6.	3235-0086	Oct. 31, 1984.
Rule 15Bc3-1.	§ 240.15Bc3-1.	3235-0087	Oct. 31, 1984.
Rule 15c2-5	§-240.15c2-5	3235-0198	Dec. 31, 1984.
Rule 15c2-11.	§ 240.15c2-11.	3235-0202	Dec. 31, 1984.
Rule 15c3-1	§ 240.15c3-1	3235-0200	Dec. 31, 1984.
Rule 15c3-3	§ 240.15c3-3	3235-0078	Oct. 31, 1984.
Rule 15c1-7	§ 240.15c1-7	3235-0134	Nov. 30, 1984.
Rule 17a-1	§ 240.17a-1	3235-0208	Oct. 31, 1983.
Rule 17a-2	§ 240.17a-2	3235-0208	Oct. 31, 1983.
Rule 17a-3	§ 240.17a-3	3235-0033	Sept. 30, 1984.
Rule 17a-4	§ 240.17a-4	3235-0197	Sept. 30, 1982.
Rule 17a-5	§ 240.17a-5	3235-0123	Nov. 30, 1982.
Rule 17a-5(c).	§ 240.17a-5(c).	3235-0199	Aug. 31, 1982.
Rule 17a-7	§ 240.17a-7	3235-0131	Nov. 30, 1984.
Rule 17a-8	§ 240.17a-8	3235-0092	Dec. 31, 1982.
Rule 17a-10	§ 240.17a-10	3235-0122	Nov. 30, 1984.
Rule 17a-11	§ 240.17a-11	3235-0085	Oct. 31, 1984.
Rule 17a-12	§ 240.17a-12	3235-0192	Dec. 31, 1984.
Rule 17a-13	§ 240.17a-13	3235-0035	Sept. 30, 1984.
Rule 17a-16	§ 240.17a-16	3235-0038	Sept. 30, 1984.
Rule 17a-17	§ 240.17a-17	3235-0039	Sept. 30, 1984.
Rule 17a-19	§ 240.17a-19	3235-0133	Nov. 30, 1984.
Rule 17a-20	§ 240.17a-20	3235-0207	Dec. 31, 1984.
Rule 17a-22	§ 240.17a-22	3235-0196	Dec. 31, 1984.
Rule 17Ab2-1(a) and (e).	§ 240.17Ab2-1(a) and (e).	3235-0195	Dec. 31, 1984.
Rule 17Ac2-1(a) and (c).	§ 240.17Ac2-1(a) and (c).	3235-0084	Oct. 31, 1984.
Rule 17Ac3-1(a).	§ 240.17Ac3-1(a).	3235-0151	Nov. 30, 1984.
Rule 17Ad-2(c), (d) and (h).	§ 240.17Ad-2(c), (d) and (h).	3235-0130	Nov. 30, 1984.
Rule 17Ad-4(b) and (c).	§ 240.17Ad-4(b) and (c).	3235-0138	Nov. 30, 1984.
Rule 17Ad-6	§ 240.17Ad-6.	3235-0137	Sept. 30, 1982.
Rule 17Ad-7	§ 240.17Ad-7.	3235-0136	Dec. 31, 1982.
Rule 17f-1(b).	§ 240.17f-1(b).	3235-0032	Sept. 30, 1982.
Rule 17f-1(c).	§ 240.17f-1(c).	3235-0037	Sept. 30, 1984.
Rule 17f-1(g).	§ 240.17f-1(g).	3235-0036	Sept. 30, 1982.
Rule 17f-2(a).	§ 240.17f-2(a).	3235-0034	Sept. 30, 1984.
Rule 17f-2(c).	§ 240.17f-(c)	3235-0029	Sept. 30, 1984.
Rule 17f-2(d).	§ 240.17f-2(d).	3235-0028	Sept. 30, 1984.
Rule 17f-2(e).	§ 240.17f-2(e).	3235-0031	Sept. 30, 1984.
Rule 19b-4	§ 240.19b-4	3235-0045	Sept. 30, 1984.
Rule 19d-1(b)-(i).	§ 240.19d-1(b)-(i).	3235-0206	Oct. 31, 1983.
Rule 19d-2	§ 240.19d-2	3235-0205	Dec. 31, 1984.
Rule 19d-3(b)-(f).	§ 240.19d-3(b)-(f).	3235-0204	Dec. 31, 1984.
Rule 19h-1(a), (c)-(e), (g).	§ 240.19h-1(a), (c)-(e), (g).	3235-0206	Oct. 31, 1983.
Rule 24b-1	§ 240.24b-1	3235-0194	Dec. 31, 1984.
Rule 24b-2	§ 240.24b-2	3235-0127	Nov. 30, 1984.
Form 1	§ 249.1	3235-0017	Aug. 31, 1983.
Form 1-A	§ 249.1a	3235-0022	Aug. 31, 1983.
Form 25	§ 249.25	3235-0080	Oct. 31, 1984.
Form 26	§ 249.26	3235-0079	Oct. 31, 1984.
Form 27	§ 249.27	3235-0248	Nov. 30, 1984.

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
Form 28	§ 249.28	3235-0249	Dec. 31, 1984.
Form 3	§ 249.103	3235-0104	Nov. 30, 1984.
Form 4	§ 249.104	3235-0103	Sept. 30, 1982.
Form 8-A	§ 249.208a	3235-0056	Oct. 31, 1984.
Form 8-B	§ 249.208b	3235-0068	June 30, 1982.
Form 10	§ 249.210	3235-0064	June 30, 1982.
Form 18	§ 249.218	3235-0121	Nov. 30, 1984.
Form 19	§ 249.219	3235-0115	Nov. 30, 1984.
Form 20-F	§ 249.220f	3235-0143	Dec. 31, 1982.
Form 6-K	§ 249.306	3235-0116	Nov. 30, 1984.
Form 8-K	§ 249.308	3235-0060	Oct. 31, 1984.
Form 10-Q	§ 249.308a	3235-0070	June 30, 1982.
Form 10-K	§ 249.310	3235-0063	Oct. 31, 1982.
Form 10-C	§ 249.310c	3235-0191	Dec. 31, 1984.
Form 11-K	§ 249.311	3235-0082	Oct. 31, 1983.
Form 18-K	§ 249.318	3235-0120	Nov. 30, 1984.
Form 19-K	§ 249.319	3235-0118	Nov. 30, 1984.
Form 12b-25	§ 249.322	3235-0058	Oct. 31, 1984.
Form 12g-4/15d-6	§ 249.323	3235-0167	June 30, 1984.
Form 13F	§ 249.325	3235-0006	Nov. 30, 1983.
Form 2-MD	§ 249.402	3235-0215	Dec. 31, 1984.
Form 8	§ 249.460	3235-0141	Oct. 31, 1983.
Form BD	§ 249.501	3235-0012	Aug. 31, 1983.
Form BDW	§ 249.501a	3235-0018	Aug. 31, 1983.
Form U-4	§ 249.502	3235-0019	Aug. 31, 1983.
Form SECO-2F	§ 249.502a	3235-0139	Nov. 30, 1984.
Form SECO-4	§ 249.504a	3235-0146	Nov. 30, 1984.
Form SECO-5	§ 249.505	3235-0129	Nov. 30, 1984.
Form X-17A-5	§ 249.617	3235-0123	Nov. 30, 1984.
Form X-17A-12(1)	§ 249.619	3235-0192	Nov. 30, 1982.
Form X-17A-12(2)	§ 249.620	3235-0193	Dec. 31, 1984.
Form X-17A-16(1)	§ 249.631	3235-0038	Sept. 30, 1984.
Form X-17A-16(2)	§ 249.632	3235-0040	Sept. 30, 1984.
Form X-17A-17	§ 249.633	3235-0039	Sept. 30, 1984.
Form X-17A-19	§ 249.635	3235-0133	Nov. 30, 1984.
Form X-17A-1	§ 249.727	3235-0208	Oct. 31, 1983.
Form X-15AA-1	§ 249.801	3235-0030	Sept. 30, 1984.
Form X-15AJ-1	§ 249.802	3235-0044	Sept. 30, 1984.
Form X-15AJ-2	§ 249.803	3235-0044	Sept. 30, 1984.
Form 19b-4	§ 249.819	3235-0045	Sept. 30, 1984.
Form SIP	§ 249.1001	3235-0043	Sept. 30, 1984.
Form MSD	§ 249.1100	3235-0083	Oct. 31, 1984.
Form MSDW	§ 249.1110	3235-0087	Oct. 31, 1984.
Form X-17F-1A	§ 249.1200	3235-0037	Sept. 30, 1984.
Form TA-1	§ 249b.100	3235-0084	Oct. 31, 1984.
Form TA-W	§ 249b.101	3235-0151	Nov. 30, 1984.
Form CA-1	§ 249b.200	3235-0195	Dec. 31, 1984.
Rule 1(a)	§ 250.1(a)	3235-0170	Dec. 31, 1984.
Rule 1(b)	§ 250.1(b)	3235-0170	Dec. 31, 1984.
Rule 1(c)	§ 250.1(c)	3235-0164	Nov. 30, 1984.
Rule 2	§ 250.2	3235-0161	Nov. 30, 1984.
Rule 3	§ 250.3	3235-0160	Nov. 30, 1984.
Rule 7	§ 250.7	3235-0165	Nov. 30, 1984.
Rule 7(d)	§ 250.7(d)	3235-0165	Nov. 30, 1984.
Rule 20(b)	§ 250.20(b)	3235-0125	Nov. 30, 1984.
Rule 20(d)	§ 250.20(d)	3235-0163	Nov. 30, 1984.
Rule 24	§ 250.24	3235-0126	Nov. 30, 1984.
Rule 26	§ 250.26	3235-0183	Dec. 31, 1984.
Rule 29a	§ 250.29a	3235-0149	Nov. 30, 1984.
Rule 29b	§ 250.29b	3235-0149	Nov. 30, 1984.
Rule 42	§ 250.42	3235-0171	Dec. 31, 1984.
Rule 44	§ 250.44	3235-0147	Nov. 30, 1984.
Rule 45	§ 250.45	3235-0154	Nov. 30, 1984.
Rules 47(b) and 20(d)	§§ 250.47(b), 250.20(d)	3235-0163	Nov. 30, 1984.
Rule 48(b)	§ 250.48(b)	3235-0156	Dec. 31, 1984.
Rule 50	§ 250.50	3235-0126	Nov. 30, 1984.
Rule 62	§ 250.62	3235-0152	Nov. 30, 1984.
Rule 71(a)	§ 250.71(a)	3235-0173	Dec. 31, 1984.
Rule 72	§ 250.72	3235-0149	Nov. 30, 1984.
Rule 83	§ 250.83	3235-0181	Dec. 31, 1984.
Rule 87	§ 250.87	3235-0182	Dec. 31, 1984.
Rule 88	§ 250.88	3235-0182	Dec. 31, 1984.
Rule 93	§ 250.93	3235-0153	Nov. 30, 1984.
Rule 94	§ 250.94	3235-0153	Nov. 30, 1984.
Rule 95	§ 250.95	3235-0162	Nov. 30, 1984.
Rules 100(a), 20(c), and 23	§§ 250.100(a), 250.20(c), 250.23	3235-0125	Nov. 30, 1984.
	Part 256	3235-0153	Nov. 30, 1984.
	Part 256a	3235-0153	Nov. 30, 1984.
	Part 257	3235-0261	Mar. 31, 1982.
Form U5A	§ 259.5a	3235-0170	Dec. 31, 1984.
Form U5B	§ 259.5b	3235-0170	Dec. 31, 1984.
Form U5S	§ 259.5s	3235-0164	Nov. 30, 1984.
Form U-1	§ 259.101	3235-0125	Nov. 30, 1984.
Form U-13-1	§ 259.113	3235-0182	Dec. 31, 1984.
Form U-6B-2	§ 259.206	3235-0163	Nov. 30, 1984.
Form U-12(I)A	§ 259.212(a)	3235-0173	Dec. 31, 1984.
Form U-12(I)B	§ 259.212(b)	3235-0173	Dec. 31, 1984.
Form U-13E-1	§ 259.213	3235-0162	Nov. 30, 1984.
Form U-R-1	§ 259.221	3235-0152	Nov. 30, 1984.
Form U-13-60	§ 259.313	3235-0153	Nov. 30, 1984.
Form U-3A-2	§ 259.402	3235-0161	Nov. 30, 1984.
Form U-3A3-1	§ 259.403	3235-0160	Nov. 30, 1984.
Form U-7D	§ 259.404	3235-0165	Nov. 30, 1984.
Form U-A	§ 259.501	3235-0125	Nov. 30, 1984.
Rules 7a-15 through 7a-37	§§ 260.7a-15 through 260.7a-37	3235-0132	Nov. 30, 1984.
Form T-1	§ 269.1	3235-0110	Nov. 30, 1984.
Form T-2	§ 269.2	3235-0111	Nov. 30, 1984.
Form T-3	§ 269.3	3235-0105	Nov. 30, 1984.
Form T-4	§ 269.4	3235-0107	Nov. 30, 1984.
Rule 6c-6(T)	§ 270.6c-6(T).	3235-0245	Oct. 31, 1983.
Rule 6e	§ 270.6e-2(b)(9).	3235-0177	Dec. 31, 1984.
Rule 7d	§ 270.7d-(b)(8)(i), (iii) and (viii).	3235-0168	June 30, 1983.
Rule 8b-11	§ 270.8b-11	3235-0176	Dec. 31, 1984.
Rule 8b-16	§ 270.8b-16	3235-0176	Dec. 31, 1984.
Rule 8b-20	§ 270.8b-20	3235-0176	Dec. 31, 1984.
Rule 8b-21(b)	§ 270.8b-21(b).	3235-0176	Dec. 31, 1984.
Rule 8b-25	§ 270.8b-25	3235-0176	Dec. 31, 1984.
Rule 8b-32(b)	§ 270.8b-32(b).	3235-0176	Dec. 31, 1984.
Rule 10f-3	§ 270.10f-3	3235-0226	Oct. 31, 1983.
Rule 12b-1	§ 270.12b-1	3235-0212	Oct. 31, 1983.
Rule 17a-7(f)	§ 270.17a-7(f).	3235-0214	Dec. 31, 1984.
Rule 17a-8	§ 270.17a-8	3235-0235	Dec. 31, 1984.
Rule 17e-1	§ 270.17e-1	3235-0217	Oct. 31, 1983.
Rule 17f-1	§ 270.17f-1	3235-0222	Dec. 31, 1984.
Rule 17f-2	§ 270.17f-2	3235-0223	Oct. 31, 1982.
Rule 17f-4	§ 270.17f-4	3235-0225	Dec. 31, 1984.
Rule 17g-1(g)	§ 270.17g-1(g).	3235-0213	Dec. 31, 1984.
Rule 17j-1	§ 270.17j-1	3235-0224	Oct. 31, 1983.
Rule 18f-1	§ 270.18f-1	3235-0211	Dec. 31, 1984.
Rule 19a-1	§ 270.19a-1	3235-0216	Dec. 31, 1984.
Rule 20a-1(b)	§ 270.20a-1(b).	3235-0158	Sept. 30, 1982.
Rule 20a-2	§ 270.20a-2	3235-0158	Sept. 30, 1982.
Rule 20a-3	§ 270.20a-3	3235-0158	Sept. 30, 1982.
Rule 22d-4	§ 270.22d-4	3235-0234	Dec. 31, 1984.
Rule 23c-1	§ 270.23c-1	3235-0260	Mar. 31, 1982.
Rule 23c-2	§ 270.23c-2	3235-0260	Mar. 31, 1982.
Rule 24f-1	§ 270.24f-1	3235-0155	Dec. 31, 1984.
Rule 24f-2	§ 270.24f-2	3235-0159	Dec. 31, 1984.
Rule 30a-1	§ 270.30a-1	3235-0219	Dec. 31, 1984.
Rule 30a-3	§ 270.30a-3	3235-0209	Dec. 31, 1984.
Rule 30b1-2	§ 270.30b1-2	3235-0218	Dec. 31, 1984.
Rule 30b2-1	§ 270.30b2-1	3235-0220	Dec. 31, 1984.
Rule 30d-1	§ 270.30d-1	3235-0025	Sept. 30, 1984.
Rule 31a-1	§ 270.31a-1	3235-0178	Sept. 30, 1982.
Rule 31a-2	§ 270.31a-2	3235-0179	Aug. 31, 1982.
Form N-5	§ 274.5	3235-0169	May 31, 1983.
Form N-8A	§ 274.10	3235-0175	Dec. 31, 1984.
Form N-1	§ 274.11	3235-0027	Sept. 30, 1984.
Form N-2	§ 274.11a-1	3235-0026	Sept. 30, 1984.
Form N-8B-2	§ 274.12	3235-0186	Aug. 31, 1982.
Form N-8B-3	§ 274.13	3235-0166	Nov. 30, 1984.
Form N-8B-4	§ 274.14	3235-0247	Dec. 31, 1984.
Form N-6F	§ 274.15	3235-0238	Dec. 31, 1984.
Form N-18F-1	§ 274.51	3235-0211	Dec. 31, 1984.
Form N-1R	§ 274.101	3235-0227	Oct. 31, 1982.
Form N-30A-2	§ 274.102	3235-0051	Oct. 31, 1984.
Form N-30A-3	§ 274.103	3235-0051	Oct. 31, 1984.
Form N-5R	§ 274.105	3235-0210	Dec. 31, 1984.
Form N-1Q	§ 274.106	3235-0246	Oct. 31, 1982.
Form N-27D-1	§ 274.127d-1	3235-0254	Dec. 31, 1984.
Form N-27D-2	§ 274.127d-2	3235-0251	Dec. 31, 1984.
Form N-27E-1	§ 274.127e-1	3235-0255	Oct. 31, 1982.
Form N-27F-1	§ 274.127f-1	3235-0253	Sept. 30, 1982.
Form N-17D-1	§ 274.200	3235-0229	Dec. 31, 1984.
Form N-23C-1	§ 274.201	3235-0230	Dec. 31, 1984.
Form N-8F	§ 274.218	3235-0157	Dec. 31, 1984.
Form N-6EI-1	§ 274.301	3235-0177	Dec. 31, 1984.
Rule 0-2	§ 275.0-2	3235-0240	Dec. 31, 1984.
Form N-54A	§ 275.53	3235-0237	Dec. 31, 1984.
Form N-54C	§ 275.54	3235-0236	Dec. 31, 1984.
Rule 203.1	§ 275.203.1	3235-0049	Dec. 31, 1984.
Rule 203.2	§ 275.203-2	3235-0042	Sept. 30, 1984.
Rule 204.1	§ 276.204-1	3235-0048	Sept. 30, 1984.
Rule 204.2	§ 275.204.2	3235-0244	Sept. 30, 1984.
Rule 204.3	§ 275.204.3	3235-0047	Sept. 30, 1984.
Rule 206(3)-2	§ 275.206(3)-2.	3235-0043	Sept. 30, 1984.
Rule 206(4)-2	§ 275.206(4)-2.	3235-0241	Jan. 31, 1983.
Rule 206(4)-3	§ 275.206(4)-3.	3235-0242	Jan. 31, 1983.
Form ADV	§ 279.1	3235-0049	Jan. 31, 1983.
Form ADV-W	§ 279.2	3235-0042	Sept. 30, 1984.
Form ADV-S	§ 279.3	3235-0046	Sept. 30, 1984.
Form 4-R	§ 279.4	3235-0240	Dec. 31, 1984.
Form 5-R	§ 279.5	3235-0240	Dec. 31, 1984.
Form 6-R	§ 279.6	3235-0240	Dec. 31, 1984.
Form 7-R	§ 279.7	3235-0240	Dec. 31, 1984.

The Commission finds that this amendment, concerning the display of the control numbers and expiration dates assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act, pertains only to procedural matters; it is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, requiring advance notice and opportunity for comment. Accordingly, it is effective December 30, 1981.

Information collection requirements of the Commission which exist as separate documents and which are not rules and regulations and are therefore not codified in 17 CFR are as follows:

Information collection requirement	Description of device	Current OMB control No.	Expiration date
1933 Act Guides 30, 55, 57, 60, 61 and 1934 Act Guide 3.	Guidelines for Disclosures by Certain Industries Under the 1933 and 1934 Acts.	3235-0069	June 30, 1982.
Form 4(6)	Implementation of Section 4(6) of the 1933 Act	3235-0097	Nov. 30, 1984.
Survey	Exchange Sales Value and Volume	3235-0001	Dec. 31, 1982.
Do.	Annual Investment Company Asset Letter	3235-0002	Do.
Survey Form R-4a	Private Noninsured Pension Plans	3235-0003	Nov. 30, 1984.
Survey Form R-5	Property and Liability Insurance Companies	3235-0004	Do.
Survey	Rule 146 Utilization	3235-0023	Sept. 30, 1983.
Do.	Private Placement Statistics (Monthly)	3235-0144	Nov. 30, 1984.
Do.	Private Placement Statistics (Quarterly)	3235-0144	Do.

By the Commission.

Dated: January 28, 1982.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-2710 Filed 2-2-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 82-15]

Field Organization of the Customs Service; Correction

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a citation in the text of a final rule published as T.D. 82-15 in the **Federal Register** on January 14, 1982 (47 FR 2088) which changed the field organization of the Customs Service by modifying the description of the port limits of the consolidated Houston-Galveston, Texas, Customs port of entry.

FOR FURTHER INFORMATION CONTACT: Gertrude Bresnahan, Regulations Control Branch, U.S. Customs Service (202-566-8237).

In FR Doc. 82-1038 appearing on page 2089, column one, the paragraph under the heading "Amendment to the Customs Regulations" is corrected to change the reference from "T.D. 81-15" to "T.D. 82-15."

Dated: January 28, 1982.

Marvin M. Amernick,

Chief, Regulations Control Branch, Regulations Control and Disclosure Law Division.

[FR Doc. 82-2782 Filed 2-2-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Reduction of Retroactive Social Security Benefits

AGENCY: Social Security Administration. HHS.

ACTION: Final rule.

SUMMARY: These final regulations implement section 1127 of the Social Security Act (the Act) as added by section 501 of Pub. L. 96-265. This provision will be effective with determinations of entitlement to monthly Social Security benefits made after June 30, 1981. The provision will require the Social Security Administration (SSA) to reduce an individual's retroactive monthly Social Security benefits under certain conditions where the individual received Supplemental Security Income (SSI) payments (including federally administered State supplementary payments) for the retroactive period. The amount of the reduction will equal the amount of the SSI payments (including federally administered State supplementary payments) that would not have been paid had the monthly Social Security benefits been paid when they were regularly due rather than retroactively.

EFFECTIVE DATE: These regulations are effective on February 3, 1982.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6629.

SUPPLEMENTARY INFORMATION: In order to obtain the public's views and comments before proceeding with these amendments, we published a Notice of Proposed Rulemaking in the **Federal Register** on April 20, 1981 (46 FR 22609). The public was invited to submit data, views, or arguments pertaining to the proposed amendment within a period of 60 days from the date of publication of the notice. We have carefully considered all the comments we received during the comment period. We have answered below the issues raised in these comments.

Social Security Disability Amendments of 1980 (Pub. L. 96-265)

Though we administer both the SSI program and the Social Security program, sometimes when an individual applies for benefits under both programs, the individual's claim under one program might be adjudicated and paid sooner than under the other program. Social Security benefits are unearned income under the SSI program. If a person receives certain kinds of unearned income such as Social Security benefits, his or her SSI payments are reduced. If the monthly Social Security benefit is paid after it is due, a windfall can occur since we cannot count unearned income in the SSI program until it is received. In effect, an individual would receive SSI payments that would not have been paid had the monthly Social Security benefits been paid when they were due rather than later.

To prevent this windfall of SSI payments, the Congress enacted section 501 of Pub. L. 96-265 which added section 1127 to the Social Security Act. That section (effective with awards of Social Security benefits that we make after June 30, 1981) requires that we reduce an individual's retroactive monthly Social Security benefit if the individual received SSI payments (including federally administered State supplementary payments) for the same period. If an individual received SSI payments (including federally administered State supplementary payments) for any month in the period beginning with the first month for which monthly Social Security benefits are payable and ending with the month before the first month in which Social Security benefits are paid, the retroactive monthly Social Security benefits for the period will be reduced by the amount of the SSI payment (including federally administered State supplementary payments) that would not have been paid if the individual had received the monthly Social Security benefits when they were due instead of retroactively.

The retroactive Social Security benefits withheld will be used first to reimburse the States for the amount of any federally administered State supplementary payments that would not have been made if the monthly Social Security benefits had been paid when due instead of retroactively. The remainder, if any, shall be covered into

the general fund of the U.S. Treasury for the Federal SSI benefits that would not have been paid.

These provisions explain when a reduction is required, the amount of the reduction and how and to whom we make reimbursement of the reduced benefits. The provisions are incorporated in § 404.408b (a), (b) and (e).

Benefits Subject to Reduction

Only monthly Social Security benefits are subject to this reduction. Social Security benefits which are payable retroactively for any month after the individual has begun receiving recurring monthly Social Security benefits, and for which the individual did not have to file a new application, are not subject to this reduction. Also, the lump-sum death payment, which is not a monthly benefit, is not subject to this reduction. This provision is in § 404.408b(c).

Refiguring the Reduction

After an initial determination, a subsequent claim action can change the amount of benefits or the number of months in the reduction period. Refiguring is generally required where there is a change in the individual's month of entitlement or the amount of the individual's Social Security benefits or SSI payments (including federally administered State supplementary payments) for the reduction period.

By refiguring the amount of the reduction where a subsequent change occurs, more or less Social Security benefits could be payable to the individual. Also, a change in the month of entitlement could affect the number of months in the reduction period or the determination as to whether the case was subject to the reduction.

The rule describing when a refiguring will be made is in § 404.408b(d).

We considered a policy that the initial reduction would be final and not subject to change regardless of any subsequent claim actions. We rejected this because the effect would not be equitable; some people would be unfairly advantaged while others would be disadvantaged.

In addition, we considered refiguring the reduction only if it would be advantageous to the individual. This policy was rejected because it could still allow windfall payments in some cases and would thus contradict the intent of section 501 of Pub. L. 96–265.

Treatment of Retroactive Social Security Benefits for SSI Purposes

For purposes of the SSI program, the balance, if any, of the retroactive monthly Social Security benefits paid to an individual for the reduction months will not be considered income in a subsequent quarter in which it is paid. Since the monthly Social Security benefits for the retroactive period will already have been considered in determining the amount of the SSI benefits that would have not been paid (that is the reduction amount), the balance of the monthly Social Security benefits for the reduction months will not be considered income again under the SSI program for a subsequent quarter in which it is paid. This is an exception to the general SSI rule of counting unearned income in the quarter in which an individual receives it, regardless of the period for which it was due. However, any retroactive monthly Social Security benefits paid for periods prior to SSI entitlement are not subject to the reduction and are considered income when received. These provisions are described in § 416.1123(d).

Public Comments

We published a Notice of Proposed Rulemaking in the **Federal Register** on April 20, 1981 (46 FR 22609). We asked for public views, data, arguments and evaluations within a period of 60 days. The comment period closed on June 19, 1981.

Some of the comments received were not germane to these particular regulations. These comments are not addressed in the preamble. Other comments are condensed, summarized or paraphrased. However, we have responded to each of the issues raised in comments that are germane to these regulations.

For ease of comprehension and for perspective, we have grouped comments according to the issues raised.

Issue: Notices of Offset.

Five commenters expressed concern about the notice that will be sent to the beneficiaries whose benefits are being offset. They each specified very detailed information they believe should be given including a monthly accounting of SSI and Social Security eligibility and payment.

Response: We do not believe it is appropriate for these regulations to detail the contents of our notice. We will, however, send a notice which explains: (1) The reason why benefits are being offset; (2) the period during which the benefits are subject to reduction; (3) the total amount of the benefits for the period; (4) the amount of SSI that would not have been paid if the Social Security benefits had been paid when due (i.e., the amount of the reduction); (5) the benefits that will be paid often the reduction; and (6) the opportunity to request reconsideration.

The notice described above comprehensively covers essential details. A longer, more detailed, and complex notice could be counterproductive in many cases. The notice that we send will invite the claimant to come into or call the district office if he or she needs more information.

Issue: Attorney Fees.

Some commenters assumed that SSA will withhold the amount of an attorney's fee from retroactive Social Security benefits before reduction by the amount of SSI payments received in the retroactive period, and suggest that SSA should do the same in regard to a fee for a non-attorney representative.

Response: Section 206(a) of the Act provides for direct payment of an authorized fee to an attorney out of the claimant's retroactive monthly benefits (subject to a maximum amount of 25 percent of the retroactive benefits), but makes no such provision for payment to a non-attorney. When we authorize a fee for a non-attorney representative, he or she must collect the fee directly from the claimant. Without specific statutory authority to make direct payment of fees to non-attorneys out of retroactive benefits, we are prevented from making them by section 207 of the Act, which prohibits the transfer or assignment of payments. Therefore, where claimants are represented by non-attorney representatives, we have no authority to withhold a portion of retroactive benefits in anticipation of direct payment of fees and will not do so in cases subject to the proposed rule.

As for attorneys' fees, the amount of retroactive benefits that is subject to withholding for payment of an attorney's fee is the total amount of retroactive Social Security benefits *payable* to the beneficiary (see § 404.1703). The amount payable is the amount of retroactive benefits less the amount of any deductions, reductions, or overpayments applicable to the retroactive period. Thus, the amount of retroactive benefits *payable* for purposes of withholding an attorney's fee is the amount of retroactive Social Security benefits reduced by the amount of any SSI payments received in the retroactive period.

Issue: Insufficient Benefits to Pay Attorney Fees.

One commenter also suggested that if retroactive benefits are insufficient to pay both the attorney's fee and the amount of the SSI reduction, the claimant should not have to pay the difference.

Response: SSA has no legal authority to relieve the claimant of the need to

pay this difference. As we have indicated, the amount of retroactive benefits *payable* must first be determined by applying the reduction for any SSI payments received in the retroactive period (and any other deductions, reductions, or overpayments applicable in the retroactive period). Twenty-five percent of the amount payable (as so determined) will then be withheld for potential payment of an attorney's fee. If that is not sufficient to pay all of the fee authorized for an attorney, the attorney has the right to collect the remainder of his or her authorized fee directly from the claimant.

Issue: Disincentive to Represent SSA Applicants.

Several commenters suggested that if attorney fees are based upon the amount of retroactive Social Security benefits after reduction for receipt of SSI payments, the proposed rule will provide less incentive for attorneys to represent disability applicants.

Response: Under authority of regulations issued pursuant to section 206(a) of the Act, SSA is directed to set a reasonable fee to compensate an attorney for services rendered in connection with a determination by us favorable to a claimant on a claim for Social Security benefits. The amount of the fee is not based upon the amount of retroactive benefits payable to the claimant; it is determined independently, based upon criteria for evaluating the attorney's services set out in § 404.1725(b). The amount of the fee authorized under those criteria may be equal to, or larger or smaller than, the amount of retroactive benefits withheld for direct payment of an attorney's fee. A fee may be authorized even if no retroactive benefits are payable. The amount of retroactive benefits payable to the claimant is pertinent only in determining how much of the authorized fee may be paid directly by SSA to the attorney. In the event that 25 percent of the retroactive benefits payable is less than the amount of the authorized fee, we will pay the amount of 25 percent directly to the attorney and the attorney is authorized to collect the remainder of the fee directly from the claimant.

Issue: Use of the term "covered into."

One of the commenters objected to the use of the term "covered into" in § 404.408b(e)(2).

Response: We considered changing the term to "credited to", or "transferred to" as the writer suggests. But "covered into" is the language used in the law. Therefore, no change is being made.

Issue: Effect of Offset on SSI Recipients.

One commenter suggested that the proposed regulation be clarified to state that it will not have the effect of retroactively removing an individual from his or her status as an eligible individual under the SSI program.

Response: We believe the regulation is clear in its intent not to remove a person's SSI eligibility status when the offset is applied. Section 416.1123(d) specifies that rather than reducing SSI in prior quarters (i.e., declaring an overpayment) we will withhold money from the Social Security retroactive payment. In this way, eligibility for SSI is undisturbed.

Issue: Inclusion of General SSI Exclusion.

One commenter stated that the inclusion of a specific reference to the $20 per month income exclusion should be incorporated in the proposed regulations.

Response: We do not believe it is necessary to do so. These regulations state that we will compute the SSI the person would have received if the Social Security benefit had been paid on time. The method of computing SSI payments is specified in the SSI regulations and the $20 per month exclusion is provided for in § 416.1124 of those regulations.

Issue: Clarification of term "Recomputation".

Two commenters proposed that § 404.408b(d), which deals with recomputing the amount of the reduction, be clarified because of the use of the word "recomputation" in § 404.240.

Response: We agree. The word recomputation is a technical term with a special meaning under section 215(f) of the Act and the regulations. To avoid confusion, the word "recomputation" is changed to "refiguring".

Issue: Delays in Computing Social Security Benefits.

One commenter is concerned about whether SSA will delay computation of the retroactive Social Security benefit until the SSI computation has been completed, reduce it by some hypothetical amount of expected SSI, or pay the Social Security benefit in full and later declare it an overpayment.

Response: We will make the Social Security benefit payment as promptly as practicable in the light of the Congressional concern about windfall payments. Where Social Security benefits are paid before SSI, the offset against Social Security benefits will not apply.

Once a special system is in place, when the Social Security claim is ready for processing, there will be an automatic interface between the Social Security and the SSI systems. The offset will be computed automatically if applicable, and the correct amount of retroactive Social Security benefits will be paid. This processing should minimize any delays in paying the retroactive Social Security benefits. Until the automatic system for processing SSI offset cases is ready for use, SSI data needed to compute the offset must be requested from the SSI system, and the computation of the offset must be performed manually. The computation will be based on actual amounts of SSI paid or the amounts that the person was eligible for during the offset period.

Issue: Initial Determinations.

Nine commenters raised the question of whether SSI offset computations and refigurings are considered initial determinations subject to appeal and whether the rules of administrative finality apply.

Response: These computations and refigurings are considered initial determinations and are subject to the rules on appeal and administrative finality in § 404.902.

Our operational instructions also explain that the rules of administrative finality apply to offset refigurings. When the rules of administrative finality do permit us to refigure the offset, there will be many situations in which the determination will be advantageous to the claimant. This will happen whenever we find that the claimant was due more in SSI payments than he or she received or when there was an SSI overpayment which the claimant might otherwise have to repay out of pocket. However, we agree that this point needs to be included in the proposed regulation. Therefore, we are amending § 404.902 by adding a new paragraph (q) to read as follows:

"(q) An offset of your benefits under § 404.408b because you previously received supplemental security income payments for the same period."

Issue: Waiver of Overpayment.

Two commenters suggested that a recomputation of the SSI offset amount which results in an overpayment of Social Security benefits should be subject to the rules for waiver of recovery of the overpayment. One commenter suggested that the regulation specify that if SSA erred in computing the amount of reduction:

(1) any resulting underpayment be paid to the beneficiary, and

(2) recovery of a resulting overpayment to be automatically waived.

Respose: Any underpayment or overpayment of Social Security benefits which results when we withhold more

or less than the correct amount of benefits under the SSI offset provision will be subject to the normal rules for disposing of an underpayment and for waiving recovery of an overpayment. To clarify this, we are amending § 404.501(a) of the regulations by adding the following new paragraph (9).

"A reduction under § 404.408b is made which is either more or less than required."

We do not agree that the recovery of overpayments that result from our error in applying this provision should be waived automatically. The rules for waiving recovery of an overpayment of Social Security benefits are stated in § 404.506 of the regulations. In short, adjustment or recovery of an overpayment may be waived if a person is without fault in causing the overpayment and the adjustment or recovery would either defeat the purpose of the program or be against equity and good conscience. The mere fact that an incorrect amount of benefits is withheld under the SSI offset provision does not relieve a person from liability for repaying the overpayment even if the person is without fault. If a person is without fault in causing such an overpayment, adjustment or recovery of the overpayment may be waived where it is deemed against equity and good conscience under § 404.512 of the regulations. We believe that these rules adequately provide for relief.

Regulatory Procedures

Executive Order 12291: These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act: We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because these regulations affect only individuals.

Paperwork Reduction Act: These regulations impose no reporting or recordkeeping requirements requiring OMB clearance.

Accordingly, these regulations with changes are adopted as set forth below.

(Secs. 204, 1102, 1127 and 1631(b) of the Social Security Act as amended; 49 Stat. 624, 49 Stat. 647 as amended, 94 Stat. 469, and 86 Stat. 1475; 42 U.S.C. 404, 1302, 1327, and 1383(b))

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance; 13.807 Supplemental Security Income Programs)

Dated: December 9, 1981.

John A. Svahn,

Commissioner of Social Security.

Approved: January 20, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

Part 404 and Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

1. A new § 404.408b is added to Subpart E of Part 404 to read as follows:

§ 404.408b Reduction of retroactive monthly social security benefits where supplemental security income (SSI) payments were received for the same period.

(a) *When reduction is required.* We will reduce your retroactive social security benefits if—

(1) You are entitled to monthly social security benefits for a month or months before the first month in which those benefits are paid; and

(2) SSI payments (including federally administered State supplementary payments) which were made to you for the same month or months would have been reduced or not made if your social security benefits had been paid when regularly due instead of retroactively.

(b) *Amount of reduction.* Your retroactive monthly social security benefits will be reduced by the amount of the SSI payments (including federally administered State supplementary payments) that would not have been paid to you, if you had received your monthly social security benefits when they were regularly due instead of retroactively.

(c) *Benefits subject to reduction.* The reduction described in this section applies only to monthly social security benefits. Social security benefits which we pay to you for any month after you have begun receiving recurring monthly social security benefits, and for which you did not have to file a new application, are not subject to reduction. The lump-sum death payment, which is not a monthly benefit, is not subject to reduction.

(d) *Refiguring the amount of the reduction.* We will refigure the amount of the reduction if there are subsequent changes affecting your claim which relate to the reduction period described in paragraph (a) of this section. Refiguring is generally required where there is a change in your month of entitlement or the amount of your social security benefits or SSI payments (including federally administered State supplementary payments) for the reduction period.

(e) *Reimbursement of reduced retroactive monthly social security benefits.* The amount of the reduction will be—

(1) First used to reimburse the States for the amount of any federally administered State supplementary payments that would not have been made to you if the monthly social security benefits had been paid when regularly due instead of retroactively; and

(2) The remainder, if any, shall be covered into the general fund of the U.S. Treasury for the amount of SSI benefits that would not have been paid to you if the monthly social security benefits had been paid to you when regularly due instead of retroactively.

2. Section 404.501 of Subpart E of Part 404 is amended by adding a new paragraph (a)(9) to read as follows:

§ 404.501 General applicability of section 204 of the Act.

(a) * * *

(9) A reduction under § 404.408b is made which is either more or less than required.

* * * * *

3. Section 404.902 of Subpart J of Part 404 is amended at the end of paragraph (o) by removing the word "and" after the semi colon and at the end of paragraph (p) by changing the period to a semi colon and adding the word "and" after the semi colon and by adding a new paragraph (q) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(q) An offset of your benefits under § 404.408b because you previously recived supplemental security income payments for the same period.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

4. Section 416.1123 of Subpart K of Part 416 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 416.1123 How we count unearned income.

(a) *When we count unearned income.* We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each calendar quarter. We describe an exception to the rule on how we count

unearned income in paragraph (d) of this section.

* * * * *

(d) *Retroactive monthly social security benefits.* When you file an application for social security benefits and retroactive monthly social security benefits are payable on that application for a period for which you also received SSI payments (including federally administered State supplementary payments), we count your retroactive monthly social security benefits as unearned income received in that period. Rather than reducing your SSI payments in quarters prior to your receipt of a retroactive monthly social security benefit, we will reduce the retroactive social security benefits by an amount equal to the amount of SSI payments (including federally administered State supplementary payments) that we would not have paid to you if your social security benefits had been paid when regularly due rather than retroactively (see § 404.408b(b)). If a balance is due you from your retroactive social security benefits after this reduction, for SSI purposes we will not count the balance as unearned income in a subsequent quarter in which you receive it. This is because your social security benefits were used to determine the amount of the reduction. This exception to the unearned income counting rule does not apply to any monthly social security benefits for a period for which you did not receive SSI.

[FR Doc. 82-2825 Filed 2-2-82; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 968-82]

Enforcement of Criminal Drug Laws

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: In order to insure maximum effectiveness and efficiency in the enforcement of the criminal drug laws of the United States, the Attorney General has decided to make the resources of the Federal Bureau of Investigation available to complement and supplement those of the Drug Enforcement Administration in this effort. To this end, this order authorizes the Director of the Federal Bureau of Investigation, concurrently with the Administrator of the Drug Enforcement Administration, to investigate violations of the criminal drug laws of the United States. To insure complete coordination of the drug enforcement effort of the Department of Justice, the order places the Administrator under the general supervision of the Director.

EFFECTIVE DATE: January 28, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Caruso, Special Assistant to the Associate Attorney General, Room 4114, U.S. Department of Justice, 10th and Pennsylvania Ave., NW., Washington, D.C. 20530. Tel. (202) 633-4078.

SUPPLEMENTARY INFORMATION: This order is not a rule within the meaning of either Executive Order 12291 section 1(a) or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301, 21 U.S.C. 871, 28 U.S.C. 509, 510, Reorganization Plan No. 1 of 1968, section 5, and Reorganization Plan No. 2 of 1973, section 6, it is hereby ordered as follows:

1. Section 0.85(a) of Title 28, Code of Federal Regulations is revised to read as follows:

§ 0.85 General functions.

* * * * *

(a) Investigate violations of the laws, including the criminal drug laws, of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The Director's authority to investigate violations of and collect evidence in cases involving the criminal drug laws of the United States is concurrent with such authority of the Administrator of the Drug Enforcement Administration under § 0.100 of this part. In investigating violations of such laws and in collecting evidence in such cases, the Director may exercise so much of the authority vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968, section 1 of Reorganization Plan No. 2 of 1973 and the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as he determines is necessary. He may also release FBI information on the same terms and for the same purposes that the Administrator of the Drug Enforcement Administration may disclose DEA information under § 0.103 of this part.

* * * * *

2. A new § 0.102, to read as follows, is added to Title 28, Code of Federal Regulations:

§ 0.102 Drug enforcement policy coordination.

The Administrator of the Drug Enforcement Administration shall perform his functions under the general supervision of the Director of the Federal Bureau of Investigation and shall report through him to the Attorney General, the Deputy Attorney General and the Associate Attorney General, as appropriate.

Dated: January 28, 1982.

William French Smith,

Attorney General.

[FR Doc. 82-2781 Filed 2-2-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS Dolphin

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) has determined that USS DOLPHIN (AGSS 555) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 12, 1982.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, USN, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: This amendment to Part 706 provides notice that the Secretary of the Navy has certified that USS DOLPHIN (AGSS 555) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 22(a) which requires that vessels of 50 meters or more in length must have

the masthead lights and sidelights visible at a range of 6 and 3 nautical miles, respectively. USS DOLPHIN (AGSS 555) is 50.4 meters (165.5 feet) in length and is required to comply fully with the requirements of Rule 22(a). Full compliance with the above-mentioned Rule 22(a) of the 72 COLREGS would preclude the utilization of USS DOLPHIN with respect to the special construction and purpose of that vessel in view of the fact that there are no know navigation lights that can withstand USS DOLPHIN's operating depth and also meet the requirements of Rule 22(a). At the present time the only know navigational lights that can provide closest possible compliance with Rule 22(a) would provide a masthead light visible at a distance of 4.3 nautical miles, and sidelights visible at a distance of 2 nautical miles. Accordingly, the Secretary of the Navy certifies that the range of visibility of the aforementioned navigational lights are in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest, since it is based on technical findings that the range of visibility of the aforementioned navigational lights on this vessel in a manner different from that prescribed herein will adversely affect the ship's ability to perform its military function.

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Four of § 706.2 is amended by adding the following note numbered 19 which reflects the certifications issued by the Secretary of the Navy:

* * * * *

19. On USS DOLPHIN (AGSS 555) the masthead light will be visible at a distance of 4.3 nautical miles and the sidelights will be visible at a distance of 2 nautical miles.

* * * * *

(Executive Order 11964; 33 U.S.C. 1605)

Dated: January 12, 1982.

Approved:

George A. Sawyer,

Acting Secretary of the Navy.

[FR Doc. 82-2830 Filed 2-2-82; 8:45 am]

BILLING CODE 3810-AE-M

Corps of Engineers, Department of the Army

33 CFR Part 204

Pacific Ocean at San Miguel Island, California Danger Zone

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending the regulations which establish a danger zone in the Pacific Ocean at San Miguel Island, California. This amendment allows the danger zone to continue with another review in five years and makes minor administrative type changes.

EFFECTIVE DATE: March 5, 1982.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Zawadzki at (213) 688-5606 or Mr. Ralph T. Eppard at (202) 272-0200.

SUPPLEMENTAL INFORMATION: Regulations were promulgated by the Secretary of the Army under 33 CFR 204.203 on January 21, 1966, to govern the use, administration and navigation of a danger zone located in the Pacific Ocean at San Miguel Island, Santa Barbara County, California. The danger zone was established to meet security requirements of the U.S. Navy Pacific Missile Range and the exceptional hazards to persons and property due to missile firings and related activities.

On September 2, 1981, the Corps of Engineers published the proposed amendment in the Notice of Proposed Rulemaking Section of the **Federal Register** (46 FR 44006) with the comment period expiring on October 2, 1981. No comments were received and accordingly, the Department of the Army is amending 33 CFR 204.203(c) as set forth below.

Note.—This regulation is issued with respect to a military function of the Defense Department and accordingly, the provisions of Executive Order 12291 do not apply. The Department of the Army has determined that this regulation will not have a significant economic impact on a substantial number of entities and thus does not require preparation of a regulatory flexibility analysis.

PART 204—DANGER ZONE REGULATIONS

Paragraph (c) of § 204.203 is revised to read as follows:

§ 204.203 Pacific Ocean at San Miguel Island, California; Naval Danger Zone.

* * * * *

(c) *The regulations.* (1) Except as prescribed in this section or in other regulations, the danger zone will be open to fishing and general navigation. Bomb drops between designated hours are expected to be intermittent, and when safe to do so, commercial fishing boats and other small craft will be granted permission to proceed through the danger zone. All vessels permitted to enter the zone during a scheduled bomb drop period, other than those owned or operated by the U.S. Government, shall proceed across the zone by the most direct route and clear the area as soon as possible. When bomb drops are not scheduled, the zone may be occupied without restriction.

(2) The anchoring, stopping, or loitering of any vessel, fishing boat, or recreational craft within the danger zone during scheduled firing/drop hours is expressly prohibited.

(3) The bomb drops will take place in the danger zone at frequent and irregular intervals throughout the year. Danger zone usage demands are identified in the Eleventh Coast Guard District, "Local Notice of Mariners." Announcements will also be made on marine radio channel 16, at 0800 local time, 1200 local time and/or 1 hour prior to bomb drop operations. Status of the zone and/or permission to enter, may be requested by calling "Plead Control" on marine channel 16 or by calling the Pacific Missile Test Center (PMTC) on telephone number (805) 982-8280 or 982-8841.

(4) The Commander, PMTC will extend full cooperation relating to the public use of the danger zone area and will fully consider every reasonable request for its use in light of requirements for national security and safety of persons and property.

(5) No seaplanes, other than those approved for entry by the Commander, PMTC, may enter the danger zone during firing periods.

(6) Landing or going ashore on San Miguel Island is specifically prohibited without prior permission of the Superintendent, Channel Islands National Park. Applications for such permission should be made to: Superintendent, Channel Islands National Park, 1699 Anchors Way Drive, Ventura, California 93003.

(7) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Test Center, Point Mugu, California, and by such other agencies as the Commandant, 11th Naval District, San Diego, California, may designate.

(8) The regulations in this section shall be in effect until further notice. They shall be reviewed in 1986.

Dated: January 5, 1982.

Approved:

William R. Gianelli,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 82-2821 Filed 2-2-82; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2022-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On April 10, 1981 Indiana submitted, as a revision to its State Implementation Plan (SIP), alternate total suspended particulate (TSP) emission limits for a portion of the Indiana Farm Bureau Cooperative Association plant in Marion County. EPA, today, is approving these alternate emission limits. This action will be effective on April 5, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

EFFECTIVE DATE: This final rulemaking is effective as of April 5, 1982.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington D.C.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington D.C. 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Indianapolis Division of Air Pollution Control; 2700 South Belmont Avenue, Indianapolis, Indiana 46221

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 1972 (37 FR 10863) EPA approved Indiana's process weight particulate regulation, APC-5, as one portion of Indiana's TSP SIP. Subsequently, in response to Section 107 of the Clean Air Act (Act), EPA designated most of Marion County as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for TSP (March 3, 1978 (43 FR 8962) and October 5, 1978 (43 FR 45993)). Part D of the Act requires each state to revise its SIP for areas designated as nonattainment. In response to the requirements of Part D, Indiana submitted revised particulate strategies and emission limits for Marion County on February 11, 1980 and October 28, 1981. EPA will propose rulemaking action on the overall Marion County TSP strategy and emission limits in the near future.

One of the requirements of a Part D SIP is that reasonably available control technology (RACT) emission limits are required for sources in nonattainment areas. In general, Indiana considers an emission limit of 0.030 grains per dry standard cubic foot (gr/dscf) to be a RACT emission limit for TSP process sources. Indiana's original nonattainment area regulation required the Indiana Farm Bureau Cooperative Association's Beech Grove Grain Terminal (Farm Bureau) to meet this emission limit. Upon petition of the Farm Bureau, Indiana reconsidered and approved revised RACT emissions limits for a portion of the facility. These emission limits were submitted as a revision to Indiana's SIP on April 10, 1981.

Farm Bureau Revision

The SIP, original nonattainment, and revised emission limits are as follows:

Source description	APC-5 limits[1] (pounds/hr)	Original RACT limits		Revised RACT limits	
		gr/dscf	tons/yr[2]	gr/dscf	tons/yr
Elevator E-1	64.3	0.030	2.1	0.016	2.0
Elevator E-2	64.3	0.030	2.1	0.060	1.7
Elevator E-3	64.3	0.030	2.0	0.060	3.1
Elevator E-4	64.3	0.030	2.1	0.060	3.1
Elevator E-5	64.3	0.030	2.0	0.120	6.5
Elevator E-6	64.3	0.030	1.9	0.120	11.9
Elevator E-7	64.3	0.030	5.1	0.0025	0.1
Elevator E-8	64.3	0.030	2.4	([3])	([3])
Elevator E-9	64.3	0.030	1.1	([4])	0.0
Elevator E-10	64.3	0.030	3.1	([4])	0.0
Elevator E-12	64.3	0.030	7.4	0.0019	0.05
North train loadout	68.7	0.030	0.6	0.029	0.03
Single truck dump	54.7		([5])	0.0012	0.04
Twin truck dump	64.8		([5])	0.0014	0.26
Dust conveying system			([5])	0.0017	0.19
Total			31.9		28.97

[1] The pounds/hour emission limits may be exceeded for all sources larger than 200 Tons/Yr whenever their emissions are less than 0.10 pounds per 1000 pounds of gases.

[2] Indiana derived these ton/year figures by multiplying the emission limits by the actual throughput. These tons/year limits are lower than those Indiana submitted with its Part D SIP.

[3] Emissions from E-8 are vented through the controls on E-3 and E-4. The tons/year of emissions for E-8 are included in the totals for E-3 and E-4 and the Gr/dscf emission limit for E-8 is the same as for E-3 and E-4.

[4] Elevators E-9 and E-10 have been removed.

[5] Not included in the original Part D SIP submittal.

It should be noted that the APC-5 and the RACT emission limits are not directly comparable. APC-5 is an hourly emission limit while the RACT limits are based on the volume processed. However, for comparison purposes, the total tons of emissions allowed by the SIP regulation, APC-5, for all sources except the dust conveying system are approximately 240 tons/year. Additionally, the emission points in today's rulemaking do not include all of the emissions from Farm Bureau. For instance, emissions from the grain dryers and the South Train Loadout are not included. The EPA approved SIP emission limits will continue to apply to those Farm Bureau emission points not specifically listed in the above revised limits.

EPA has reviewed Indiana's submission of the revised Farm Bureau emission limits and finds them acceptable, because the tons/year of emissions from the facility will be less than they would be under Indiana's present SIP and less than under Indiana's TSP RACT regulations. EPA concurs with the State that, because the total tonnage emitted is less than that which would be emitted under Indiana's RACT regulations, the revised emission limits constitute RACT for Farm Bureau. EPA has determined that differential computer dispersion modeling of ambient air quality is not required for approval of these revised emission limits because: (1) The total mass of emissions will be less, (2) the emissions are of similar composition and come from the same plant, (3) the operations

are similar, and, therefore, (4) ambient pollutant levels should decrease from those levels which would occur under the Indiana SIP or Indiana's previously submitted "RACT" regulations. EPA, today, is approving both the emission limits and the mass per year limits contained in the revised Farm Bureau submission.

EPA's approval of these revised particulate emission limits does not affect any other SIP regulation which is applicable to the facility, including opacity limits. Indiana's particulate SIP does not contain methods to determine compliance for non-stack sources such as Farm Bureau. This deficiency is being addressed in EPA's analysis of Indiana's Part D particulate SIP, which should be proposed in the **Federal Register** shortly, and, therefore, will not be addressed in today's action. EPA's action on compliance methods in its Part D rulemaking will apply to Farm Bureau as well.

Because EPA considers today's action as noncontroversial and routine, it is approving it today without prior proposal. The public is advised that this action will be effective April 5, 1982. However, if notice is received by EPA within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and a comment period.

Pursuant to the provisions of 5 U.S.C. Section 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities, because it only approves emission limits for a single source. Furthermore, this action only approves a State action. It will impose no new requirements.

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

If no comments are received on today's action and it, therefore, becomes final, judicial review of this action under Section 307(b)(1) of the Clean Air Act is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. If comments are received on today's action, as discussed earlier, EPA will withdraw its final approval and propose today's action for public comment. Under these circumstances, a petition for review must be filed within 60 days from the date of EPA's ultimate rulemaking. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

(Secs. 110 and 172, Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: January 29, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Section 52.770 is amended by adding paragraph (c)(30) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(30) On April 10, 1981, Indiana submitted revised emission limits for Indiana Farm Bureau Cooperative Association's Beech Grove plant.

* * * * *

[FR Doc. 82-2770 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Parts 122 and 146

[WH-FRL 2016-2]

Underground Injection Control Program Criteria and Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule

SUMMARY: The Environmental Protection Agency is promulgating amendments to its Consolidated Permit Regulations (40 CFR Part 122) and Technical Criteria and Standards for State Underground Injection Control Programs (40 CFR Part 146). The amendments are in response to petitions for review of the regulations in these areas as promulgated on May 19, 1980 and June 24, 1980. The regulations are promulgated under Part C of the Safe Drinking Water Act.

DATES: The regulations in this promulgation shall become effective March 5, 1982; except § 146.23 and § 146.33 which contains information collection requirements which are under review at OMB.

Comments of a technical and non-substantive nature may be submitted until March 5, 1982.

ADDRESSES: Comments of a technical and non-substantive nature should be addressed to, Judy Long, Comment Clerk, Ground Water Protection Branch, EPA, Office of Drinking Water (WH-550), Washington, DC 20460 (202) 755-0405.

FOR FURTHER INFORMATION CONTACT: Thomas E. Belk, Chief, Ground Water Protection Branch, Environmental Protection Agency, (202) 426-3934.

SUPPLEMENTARY INFORMATION: These amendments, with very few exceptions, are the same as were proposed on October 1, 1981 (45 FR 48249 et seq.). The discussion below explains these few changes and responds to the major comments. The preamble of the October 1 proposal (45 FR 48243 et seq.) contains a detailed discussion of the background and reasons for these amendments and, in conjunction with the additional explanation included here, serves as the Statement of Basis and Purpose for this rulemaking.

I. Response to Comments

Testimony on the proposed regulations was given at public hearings in Washington, D.C. and Denver, Colorado and was overwhelmingly favorable. In addition, written comments were received which were generally favorable to the proposal. However, the Agency received some adverse comments and some comments of a technical nature which are addressed below.

A. Comments on the Major Program Concepts

Several commenters expressed concern regarding what they see as excessive relaxation of requirements and cite in particular:

(1) The revised definition of Underground Source of Drinking Water (USDW);

(2) The additional aquifer exemption criterion;

(3) The changes in the "no-migration" standard;

(4) The shifting of certain practices from Class III to Class V; and

(5) Continuing operation of certain existing Class IV wells.

These changes were proposed by the Agency only after it was satisfied that they were consistent with the mandate of the Safe Drinking Water Act. In deciding whether or not the proposed changes were appropriate, the Agency considered three key points in the Safe Drinking Water Act (SDWA):

• The Agency's mandate is to promulgate *minimum requirements* for effective State programs to prevent

underground injection which endangers drinking water sources (SDWA section 1421(b)(1)).

- The test of endangerment is whether or not injection "may result in the presence in underground water which *supplies or can reasonably be expected to supply any public water system* of any contaminant and if the presence of that contaminant may result in such systems not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons" (SDWA section 1421(d)(e) (emphasis added)).
- The Agency is admonished not to "prescribe requirements which interfere with or impede: (A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or (B) any underground injection for the secondary or tertiary recovery of oil or natural gas" and to "* * * provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State" (SDWA section 1421(b)(2) and (3)).

The statutory mandate of the Safe Drinking Water Act affords a range of discretion to EPA in developing specific program requirements. These amendments adjust the requirements as originally promulgated within that range, are consistent with the statutory directives cited above, and relieve well operators of unnecessarily burdensome requirements without any significant reduction in environmental protection.

Revision of the Definition of Underground Sources of Drinking Water

Several commenters interpreted the revised definition to mean that only aquifers which *currently* supply a *public water system* will be protected. In fact, the Agency, aware of the mandate to protect not only those aquifers but also "underground waters which can reasonably be expected to supply any public water system," has kept a broad interpretation of these potential sources of drinking water by defining as USDWs any aquifer which currently supplies drinking water *for human consumption* or contains *fewer than 10,000 mg/l of total dissolved solids* as long as it contains a sufficient quantity of water to supply a public water system as defined by the Safe Drinking Water Act (SDWA section 1401(4)). An aquifer qualifies under this criterion if it is capable of yielding enough water for 25 individuals. This quantity is actually very small and in most cases is less than the amount normally produced by a single low yield domestic well. Therefore, EPA believes that the current definition effectively protects all currently used aquifers regardless of whether they are currently used as public water systems. The definition is tied to "public water system" because the SDWA uses precisely this term to describe what the UIC program is intended to protect (SDWA section 1421(d)(2)).

Revision of the Aquifer Exemption Criteria

In addition to existing criteria, the amendments will permit the Director to exempt an aquifer not currently a source of drinking water if it contains between 3,000 and 10,000 mg/l total dissolved solids (TDS) and "is not reasonably expected to supply a public water system" (SDWA section 1464(c)). Several commenters expressed the opinion that water containing between 3,000 and 10,000 mg/l of total dissolved solids (TDS) is very valuable in some parts of the country, particularly the western States, and that the new exemption criterion is not appropriate. Part of this concern seems to be based on the assumption that all waters containing between 3,000 and 10,000 mg/l TDS will be exempted. The Agency agrees that aquifers containing between 3,000 and 10,000 mg/l TDS can be extremely valuable,[1] and it is for this reason that the current definition of USDWs retains the 10,000 mg/l TDS limit. Although the Agency established a national definition for an USDW, the Agency believes it appropriate to account for varying geological and hydrological conditions by providing flexibility for the State Directors to request exemptions for some aquifers (or portions thereof) containing between 3,000 and 10,000 mg/l TDS. The value of such aquifers is certainly dependent upon "geologic and hydrological conditions" in the specific States, and EPA is required to consider such variability under SDWA section 1421(b)(3)(A)(B). The new criterion is consistent with the SDWA, which uses the same language to define the range of its protection as "underground water which supplies or can *reasonably be expected to supply* any public water system" (SDWA section 1421(d)(2) (emphasis added)). This possibility for exemption certainly should not be interpreted as a mandate to exempt all such aquifers. Therefore, the Agency as a safeguard to ensure that this exemption not be abused, requires public notice of and opportunity to comment on any proposed exemption. Further, it has retained the right to disapprove such exemptions (§ 122.35(c)).

[1] Desalination of Brackish Groundwater, Claire M. Gesalman, U.S. EPA, October 1981.

Revision of the No-Migration Standard

Several commenters saw the revision of § 122.34, "Prohibition of movement of fluid into underground sources of drinking water," as a major weakening of the regulations. As stated in the preamble to the proposal (46 FR 48247), the change in § 122.34 is necessitated by the fact that the statement was too broad and did not take into consideration the fact that Part 146 as originally promulgated allows some migration in certain cases (particularly cementing of existing or newly converted Class II wells (§ 146.22(c) and (d)). The Agency believes that the technical requirements of Part 146, which retain the non-migration standard where appropriate, are adequate to ensure protection of underground sources of drinking water. Several commenters also noted that in § 122.34(b) the duty of the Director to prescribe additional requirements as remedial action is based on an indication of the movement of any contaminant into an USDW. The commenters expressed concern that contamination would have to occur before any remedy could be undertaken. However, in addition to the authority of the Director to prescribe additional requirements in § 122.34(b), the Part 146 technical requirements impose many mandatory standards designed to protect USDWs. A violation of any of these requirements would trigger remedial action, including an enforcement action if necessary, *whether or not an underground source of drinking water was already affected.* For example, if a mechanical integrity test shows a leak in the casing of a well, remedial action must be undertaken whether or not the leak has caused migration into an USDW. Similarly, injection pressure must be limited so as not to fracture the confining zone, whether or not fracturing of the zone would cause migration into an USDW. The Agency believes that the change in § 122.34 has in no way weakened the requirements of Part 146 and will promulgate the change as proposed.

Shift of Certain Practices From Class III to Class V

Several commenters were of the opinion that wells used in the recovery of energy from lignite, tar sands and oil shale should remain in Class III, rather than be placed in Class V, because they view Class V as unregulated. In fact, despite the flexibility that the shift affords, Class V still maintains

significant regulatory safeguards. The Director of a State program must have enforcement powers against Class V wells, and must be able to: request that the owner/operator of a Class V well obtain a permit; and take enforcement action against Class V wells, or order closure of Class V wells, if he finds that these wells *may* cause a violation of a primary drinking water standard or *may* otherwise adversely affect the health of persons (§ 122.34 (c) and (d)).

Within three years of approval of a State program, the State must submit recommendations for the *appropriate regulatory approaches* for Class V wells (§ 146.52). The Agency believes that waiting those three years provides an opportunity to set regulatory requirements, where necessary, which can then be based on extensive knowledge of the practices.

In taking this approach, the Agency recognizes that these are emerging technologies, which may pose unique problems that may not be adequately addressed by the existing technical requirements and that may warrant different regulatory treatment. Furthermore, many of these experimental operations involve Federal participation under other programs and, as such, are already subject to extensive environmental scrutiny.

Continuing Operation of Certain Existing Class IV Wells

A number of commenters were concerned with the Agency's approach to the regulation of hazardous waste disposal wells. Specifically, commenters objected to: (1) the absence of final standards for Class IV wells other than those injecting directly into USDWs; (2) the clarification that hazardous waste injection into exempted aquifers is not banned by the regulations at this time; and (3) the amendment to § 122.37 to provide authority for those Class IV wells for which standards were reserved to continue to operate. Each of these comments is addressed below.

Absence of Final Standards. During the promulgation of the Consolidated Permits Regulations in the spring of 1980, the Agency decided to reserve the standards and requirements for certain types of Class IV wells. This decision is not a part of the present rulemaking, and was discussed in the preamble to the final Consolidated Permits Regulations. At that time, the Agency requested further public comment on several options under consideration (45 FR 33331–3). In that discussion, the Agency also expressed its belief that technical requirements for certain Class IV wells and certain hazardous waste management facilities governed by the Resource Conservation and Recovery Act (RCRA) should be developed in coordination in order to assure, to the extent allowable under the governing statutes, consistent technical requirements for facilities capable of causing a similar degree of environmental risk. The Agency is still proceeding in that context. Final requirements for the reserved Class IV wells will be the subject of a separate rulemaking in the future.

Injection into Exempted Aquifers. In explaining the aquifer exemption portions of these regulations, § 122.31(d) clearly stated that exempted aquifers "* * * are those which would otherwise qualify as 'underground sources of drinking water' to be protected, but which have no real potential to be used as drinking water sources. *Therefore they are not USDWs.*" (45 FR 33437; (emphasis added).)

Therefore, the injection of hazardous waste into an *exempted* aquifer is not included in the ban prescribed by § 122.36. The Agency's willingness to clarify this point by adding § 122.31(d)(3), does not constitute a departure from the regulatory framework of the promulgated regulations.

Authorization for Class IV. At the time of promulgation, the decision on how to treat Class IV wells used to inject above USDWs had not been made, and requirements for these wells were reserved. The regulations as originally promulgated did not specifically authorize these wells to continue operation pending development of these requirements. The Agency anticipated completing the requirements for Class IV in a relatively short time, certainly prior to the effective date of any State UIC Program.

The Agency has not yet developed these requirements, and now that several State programs are about to be established these Class IV wells could be considered banned because not specifically authorized. To avoid the unintended result and to preserve full discretion in determining how these wells should be treated, § 122.37 has been amended to provide explicitly for their continued operation until such a time as the Agency develops its final regulatory requirements for them. The amendments would not authorize the construction of new wells of this type.

B. Other Comments

Several commenters were concerned with the proposed changes in requirements for analysis of injected fluids for Class III wells. The proposal requires that a qualitative analysis and ranges in concentrations of *all* constituents of injected fluids be furnished instead of qualitative and quantitative analyses. The Agency believes that this change is in fact appropriate for Class III operations. In most cases, the purpose of fluid injection in a Class III well is to cause chemical reactions in the injection zone which will change the nature of the injection formation, and result in the presence in the injection zone of a fluid, the chemical composition of which can be quite different from that of the injected fluid. For example, in the case of salt mining operations, it is not the injected fluid, fresh water, which may endanger USDWs, but the brine solution that results from the injection of the fresh water into a salt deposit. It is this solution which needs to be closely monitored in order to protect USDWs.

Moreover, as explained in the preamble to the proposed amendments (46 FR 48248), the exact chemical composition of the injected fluids is sometimes of a highly confidential nature, and asking the applicant for a permit to reveal that composition could have imposed a burden on the applicant without a corresponding environmental benefit. The Agency also stated that the applicant could request Federal confidentiality if he considered that the required information was of a proprietary nature. One commenter expressed the opinion that by the terms of the SDWA and various Federal regulations, information on the nature of injected fluids cannot be afforded confidential treatment. Those provisions, however, deny confidentiality only to "information which deals with the existence, absence, or level of contaminants in drinking water" § 122.19(b)(2). By allowing applicants to demonstrate that certain information should be treated confidentially, the Agency has not changed the standards of confidentiality nor established any presumption that applicants will meet these standards. The determination as to whether the composition of injection fluids could be construed to deal with the absence, existence, or level of contaminants in drinking water, thereby precluding confidential treatment, would have to be made at the time an application for confidential treatment was filed. Apart from such a determination, the cited provisions cannot force the Agency to gather specific information. The determination of what information is necessary for EPA to administer its standards and protect drinking water is a matter squarely within the Agency's discretion. EPA has determined that, for the reasons outlined above, precise

analyses of injected fluids are not necessary for protection of drinking water. It is in an enforcement action that knowledge of the precise concentrations becomes necessary, because the Agency may need to know exactly how much a given operator contributed to whatever damage may have occurred. The regulations specifically preserve EPA's right to collect precise analyses in the course of any enforcement investigation.

Commenters were also concerned with the proposed changes in monitoring requirements for Class III wells. The Agency believes that they are consistent with the mandate of the Safe Drinking Water Act that the Agency promulgate *minimum requirements*. The range of operations covered in Class III encompasses a variety of technical practices which cannot be adequately addressed by a single standard. Monitoring requirements must be carefully tailored to each situation, and this can only be accomplished by giving discretion to the Director to set specific requirements, within the framework of the regulations, for each type of operation under his jurisdiction.

One commenter requested that the Agency clearly state that the decision to apply for an area permit and the size of the project to be covered by the area permit rests with the applicant. While the applicant has the option of applying for an area permit, the final decision on whether or not to grant area permits, and on whether or not the project qualifies as a candidate for an area permit under the criteria listed at § 122.39, rests with the Director. On the same subject, two commenters expressed the opinion that area permits should be available for wells used to inject hazardous waste. Because of the liberalization of requirements for area permits, particularly the discretion given to the operator regarding construction of new wells under an area permit without prior notice to the Director, the Agency believes that the restriction of area permits to wells that do not inject hazardous waste is reasonable. However, this does not mean that an operator who is going to construct two or three wells at one facility to handle hazardous waste cannot request that the permits be processed in a single permitting action.

One commenter expressed the opinion that all reference to wells used for storage of natural gas should be removed from the regulations, and that these wells should clearly be excluded from the regulations since they have been excluded from coverage of the Act by the 1980 amendments (SDWA section 1421(d)(1)). The Agency agrees and is revising §§ 122.31(d) and 146.51(b) accordingly.

One commenter stated that the words "energy extraction" should be removed from the definition of Class III wells, since these wells have been transferred to Class V for the time being, and that the definition should be similar in § 122.32(c)(2) and § 146.05(c)(2). The Agency agrees and is revising these sections accordingly. If pursuant to the assessment of Class V wells the Agency finds it appropriate to place additional practices in Class III, the definition will be revised.

One commenter stated that § 146.08(c)(1), which describes the tests appropriate to detect the absence of fluid movement behind the casing of a well, is inconsistent with the flexibility given the Director to exempt certain Class III wells from the cementing requirements, since these tests are primarily designed to detect the presence of cement behind the casing. The Agency disagrees that a temperature log can only be used if a well has been cemented. It is designed to show movement of fluid between strata and is based on the variation in temperature of formation fluid with depth. It is not dependent on the heat of hydration of cement as described in the comment. In any case, the Director has discretion regarding which test of mechanical intregrity is applicable in particular situations and the Agency believes that the Director will use this discretion to require only appropriate tests.

One commenter stated that wells used at liquid natural gas pipe line terminals to inject water extracted during the final gas drying process along with blow-down water should be clearly identified as Class II wells. The Agency believes that national minimum standards are not the appropriate place to classify all individual practices, some of which may be unique to geological and hydrologic conditions or the regulatory program peculiar to one or a few States. The classification scheme is intended as a framework for State Directors and the decision to place these and other borderline wells in one class or another shall be made on a case-by-case basis.

Several comments were received pointing out technical problems with the proposal.

- A paragraph added to § 122.31(d) in the August 27 technical amendments was accidentally deleted in the October 1 proposed amendments. It has been reinstituted as § 122.31(d)(3).
- The instructions on the changes to § 122.39, and § 146.24 were not consistent with the amendatory language and have been revised accordingly.
- The amendatory language in § 122.42(g) is changed to refer to injection wells rather than injection operations to conform with the language of the stipulation agreement.
- One commenter pointed out that packers are not necessarily placed inside the casing, but can also be used between casing and borehole. The Agency agrees and is dropping the words "within the casing" from the definition in § 146.03.
- There is an incorrect cross reference in § 146.05(d)(3) which refers to § 146.05(1) instead of § 146.05(a)(1). The correct cross reference is now inserted.
- In § 146.08(b)(2) the final period is replaced with "or" to allow for the addition of new paragraph (b)(3).
- The first line in the amendatory language for § 146.22(b)(1) is changed to show the new paragraph numbering.
- In the August 27 technical amendments the equation for the radius of endangering influence in § 146.06 was misprinted in the **Federal Register**. The brackets encompassed only the numerator instead of the whole fraction. It is corrected in this promulgation.

In order to assist EPA to correct typographical errors, incorrect cross-references and similar technical errors, comments of a technical and non-substantive nature on the final regulations may be submitted until March 5, 1982. The effective date will not be delayed by consideration of such comments.

Finally, two commenters requested that slurry borehole mining be clearly excluded from Class III and placed in Class V, and several commenters stated that salt solution mining wells should be in Class II. These comments pertain to the regulatory scheme as originally promulgated. Since the amendments that are the subject of this rulemaking do not involve these issues, the Agency does not feel that it is appropriate to deal with these comments at this time.

II. Economic and Regulatory Impacts.

A. Expected Economic Impact

The regulations promulgated today will result in savings to owners and operators of approximately $70 million over five years compared to the cost they would have incurred under the existing regulations. These savings result from reductions in the requirements for mechanical integrity testing, monitoring and reporting, and permit application for Class II wells, as well as the removal of certain wells

from coverage under Class III. The proposed regulations are not expected to have any adverse impact on oil and gas production, or on production from Class III operations. In addition to savings to owners and operators EPA expects the States to save $1.4 million over five years due to a reduced number of permits to review as well as less detailed information to evaluate in the application.

A detailed economic analysis of this proposal is available upon request.[2]

B. Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.*, the reporting or recordkeeping provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained. A notice of that approval will be published in the **Federal Register.**

The promulgated regulations will result in less paperwork burden on owners and operators, as well as State enforcement bodies, by reducing the amount of monitoring information which must be collected and the number of times per year the information is to be submitted. In addition, less detailed information will be required on permit applications, and applications for area permits can cover wells of various classes, not just wells of similar construction. These changes are expected to result in a reduction of 213,000 hours of monitoring and reporting time expended by owners and operators, and a reduction of 102,000 hours of permit processing time by the States, over a five-year period.

C. Impact on Small Business

These regulations are expected to reduce the costs to small Class II businesses, and the Agency knows of no small businesses affected by the changes in the Class III regulations. As noted in the separate document discussing the economic effects of these regulations,[3] the Agency examined two potential definitions of a small entity for Class II operations. One involved a definition developed by the Department of Energy, defining a small entity as a firm producing less than 400,000 barrels of oil or less than 2 billion cubic feet of gas annually. Approximately 97 percent of the firms producing oil and gas fall into this category. An alternative definition was based upon well production with stripper wells defined as those producing less than 10 barrels per day of oil. Stripper wells account for approximately 70 percent of all producing wells. Under both definitions it seems probable that the majority of resource savings from these changes would accrue to small entities. Since the limited savings to Class II businesses will be spread among so many small entities the impact on each of them is likely to be small. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

D. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the amendments to the regulations are major and therefore subject to the requirement of a Regulatory Impact Analysis. These Amendments modify certain monitoring and reporting requirements, provide greater flexibility to operators and to State enforcement agencies and generally make the regulations more flexible and less burdensome for a savings of approximately $70 million over five years. As such they do not constitute major rulemaking according to the criteria in E.O. 12291 Section 1(b). This regulation was submitted to OMB for review as required by E.O. 12291 Section 3(c)(3). Any comments from OMB to EPA and any response by the Agency are available for public inspection at the Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC.

(Secs. 1421, 1422, 1423, 1431, 1445, 1447, 1450, Safe Drinking Water Act, as amended 42 U.S.C. 300(f) et seq.)

Dated: January 28, 1982.

Anne M. Gorsuch,

Administrator.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND INJECTION CONTROL PROGRAM

40 CFR Part 122 is amended as follows:

1. In § 122.3 the definition for "Underground source of drinking water" is revised and a definition of "Project" added to read as follows:

§ 122.3 Definitions.

* * * * *

Project means a group of wells in a single operation.

* * * * *

Underground source of drinking water (USDW) (RCRA and UIC) means an aquifer or its portion:

(1)(i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water system; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/l total dissolved solids; and

(2) Which is not an exempted aquifer.

* * * * *

2. In § 122.10 paragraph (a)(4) is revised to read as follows:

§ 122.10 Schedules of compliance.

(a) * * *

(4) Reporting—A RCRA or NPDES permit shall be written to require that no later than 14 days following such interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements. A UIC permit shall be written to require that if paragraph (a)(1)(ii) of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

* * * * *

3. In § 122.31 the introduction to paragraph (d) is revised; paragraph (d)(2)(iii) is redesignated (d)(2)(v) and new paragraphs (d)(2)(iii), (d)(2)(vi) and (d)(3) are added to read as follows:

§ 122.31 Purpose and scope of Subpart C.

* * * * *

(d) Scope of the permit or rule requirement. The UIC permit program regulates underground injections by five classes of wells (see definition of "well injection," § 122.3). The five classes of wells are set forth in § 122.32. All owners or operators of these injection wells must be authorized either by permit or rule by the Director. In carrying out the mandate of the SDWA, this Subpart provides that no injection shall be authorized by permit or rule if it results in the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may adversely affect the health of persons (§ 122.34). Existing Class IV wells which inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (§ 122.36). Class V wells will be inventoried and assessed and regulatory action will be established at

[2] Analysis of the Expected Economic Impacts of the Proposed UIC Regulations, U.S. EPA Office of Drinking Water, September 1981.

[3] Ibid.

a later date. In the meantime, if remedial action appears necessary, an individual permit may be required (§ 122.37) or the Director must require remedial action or closure by order (§ 122.34(c)). During UIC program development, the Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water (see § 123.4(g) for State programs). This will provide an aid to the Director in carrying out his or her duty to protect all USDWs. An aquifer is a USDW if it fits the definition, even if it has not been "identified." The Director may also designate "exempted aquifers" using criteria in § 146.04. Such aquifers are those which would otherwise qualify as "underground sources of drinking water" to be protected, but which have no real potential to be used as drinking water sources. Therefore, they are not USDWs. No aquifer is an "exempted aquifer" until it has been affirmatively designated under the procedures in § 122.35. Aquifers which do not fit the definition of "underground sources of drinking water" are not "exempted aquifers." They are simply not subject to the special protection afforded USDWs.

* * * * *

(2) * * *

(iii) Nonresidential cesspools, septic systems or similar waste disposal systems if such systems (A) are used solely for the disposal of sanitary waste, and (B) have the capacity to serve fewer than 20 persons a day.

(iv) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.

(v) Any dug hole which is not used for emplacement of fluids underground.

(3) The prohibition applicable to Class IV wells under § 122.36 does not apply to injections of hazardous wastes into aquifers or portions thereof which have been exempted pursuant to § 146.04.

4. In § 122.32 paragraphs (a)(1), (b)(1) the introduction to paragraph (c), paragraphs (c)(2) and (d) are revised and paragraph (c) (4) and (5) removed to read as follows:

§ 122.32 Classification of injection wells.

(a) * * *

(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water.

* * * * *

(b) * * *

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

* * * * *

(c) Class III. Wells which inject for extraction of minerals including:

* * * * *

(2) In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

* * * * *

(d) Class IV

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (¼) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (¼) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under §§ 122.32(a)(1) or 122.32(d) (1) and (2) (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

* * * * *

5. In § 122.34 paragraphs (a) and (b) are revised to read as follows:

§ 122.34 Prohibition of movement of fluid into underground sources of drinking water.

* * * * *

(a) No authorization by permit or rule shall allow the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(b) For Class I, II, and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 122.15, or the permit may be terminated under § 122.16 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see § 122.37(a).

* * * * *

6. In § 122.35 paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 122.35 Identification of underground sources of drinking water.

* * * * *

(b)(1) The Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Director proposes to designate as exempted aquifers using the criteria in 40 CFR 146.04.

(2) No designation of an exempted aquifer submitted as part of a UIC Program shall be final until approved by the Administrator as part of the State program.

(3) Subsequent to program approval, the Director may, after notice and opportunity for a public hearing, identify additional exempted aquifers. Exemption of aquifers identified (i) under § 146.04(b) shall be treated as a program revision under § 123.13; (ii) under § 146.04(c) shall become final if the State Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days. Any disapproval by the Administrator shall state the reasons and shall constitute final Agency action for purposes of judicial review.

(c)(1) For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under § 146.04(b)(1) to furnish the data

necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a timetable of planned development of the mining zone shall be considered by the Director in addition to the information required by § 122.38(c). Approval of the aquifer exemption shall be treated as a program revision under § 123.13.

(2) For Class II wells, a demonstration of commercial producibility shall be made as follows:

(i) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.

(ii) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

7. In § 122.37 paragraphs (a)(1)(iii)(D), (a)(2)(i)(D), and (a)(3) are revised to read as follows:

§ 122.37 Authorization of underground injection by rule.

(a) * * *

(1) * * *

(iii) * * *

(D) Section 122.41(e)—(notice of abandonment);

* * * * *

(2) * * *

(i) * * *

(D) Section 122.41(e)—(notice of abandonment);

* * * * *

(3)(i) Injection into existing Class IV wells as defined in § 122.32(d)(1) may be authorized for a period not to exceed six months after approval or promulgation of the UIC program. Such rules shall apply the requirements of § 122.45(c).

(ii) Injection into existing Class IV wells as defined in §§ 122.32(d)(2) and (3) may be authorized until six months after approval or promulgation of an UIC program incorporating criteria and standards under Part 146, Subpart E applicable to Class IV injection wells. Such rules shall apply the requirements of § 122.45(c).

* * * * *

8. In § 122.39 paragraphs (a)(1), (a)(3), (a)(4) and (c)(1) and the introduction to (c) are revised, and paragraph (a)(5) is removed to read as follows:

§ 122.39 Area permits.

* * * * *

(a) * * *

(1) Described and identified by location in permit application(s) if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;

* * * * *

(3) Operated by a single owner or operator; and

(4) Used to inject other than hazardous waste.

* * * * *

(c) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(1) The permittee notifies the Director at such time as the permit requires.

* * * * *

9. In § 122.41 paragraphs (b) and (e) are revised to read as follows:

§ 122.41 Additional conditions applicable to all UIC permits.

* * * * *

(b) In addition to § 122.7(j)(2) (monitoring and records): the permittee shall retain records concerning the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 122.42(f). The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.

* * * * *

(e) The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

10. In § 122.42 paragraph (g) is revised to read as follows:

§ 122.42 Establishing UIC permits conditions.

* * * * *

(g) *Financial responsibility.* The permit shall require the permittee to maintain financial responsibility and resources to close, plug, and abandon the underground injection wells in a manner prescribed by the Director. The permittee must show evidence of financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the Director.

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

40 CFR Part 146 is amended as follows:

1. In § 146.03 the definitions for "Conventional mine", "Experimental technology", and "Project" are added and the definitions for "Packer" and "Underground sources of drinking water" are revised to read as follows:

§ 146.03 Definitions.

* * * * *

Conventional mine means an open pit or underground excavation for the production of minerals.

* * * * *

Experimental technology means a technology which has not been proven feasible under the conditions in which it is being tested.

* * * * *

Packer means a device lowered into a well to produce a fluid-tight seal.

* * * * *

Project means a group of wells in a single operation.

* * * * *

Underground source of drinking water (USDW) means an aquifer or its portion:

(1)(i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water system; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/l total dissolved solids; and

(2) Which is not an exempted aquifer.

* * * * *

2. In § 146.04 paragraphs (b)(1) and (b)(4) are revised and (c) is added to read as follows:

§ 146.04 Criteria for exempted aquifers.

* * * * *

(b) * * *

(1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible.

* * * * *

(4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or

(c) The Total Dissolved Solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

3. In § 146.05 paragraphs (a)(1), (b)(1), (d), (e)(2), (e)(9), (e)(12) and the introduction to paragraph (c) and (e) are revised, (e)(16) is added and (c)(4) and (c)(5) are removed to read as follows:

§ 146.05 Classification of injection wells.

* * * * *

(a) * * *

(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one quarter (¼) mile of the well bore, an underground source of drinking water.

* * * * *

(b) * * *

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

* * * * *

(c) Class III. Wells which inject for extraction of minerals including:

* * * * *

(d) Class IV

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities,or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under §§ 146.05(a)(1) or 146.05(d) (1) and (2) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

(e) Class V—Injection wells not included in Class I, II, III, or IV. Class V wells include:

* * * * *

(2) Cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.

* * * * *

(9) Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to non-residential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons a day.

* * * * *

(12) Injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power.

* * * * *

(16) Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

4. In § 146.06 paragraph (a)(2) is revised to read as follows:

§ 146.06 Area of review.

* * * * *

(a) * * *

(2) Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis equation illustrates one form which the mathematical model may take.

$$r = \left(\frac{2.25KHt}{S10^{x}}\right)^{1/2}$$

where

$$x = \frac{4\pi KH(h_w - h_{bo}S_pG_b)}{2.3Q}$$

r = Radius of endangering influence from injection well (length)
k = Hydraulic conductivity of the injection zone (length/time)
H = Thickness of the injection zone (length)
t = Time of injection (time)
S = Storage coefficient (dimensionless)
Q = Injection rate (volume/time)
h_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water
h_w = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water
S_pG_b = Specific gravity of fluid in the injection zone (dimensionless)
π = 3.142 (dimensionless)

The above equation is based on the following assumptions:

* * * * *

5. In § 146.08 the introduction to paragraph (b) and paragraph (b)(2) are revised and paragraphs (b)(3), (c)(3) and (c)(4) added to read as follows:

§ 146.08 Mechanical integrity.

* * * * *

(b) One of the following methods must be used to evaluate the absence of significant leaks under paragraph (a)(1) of this section:

* * * * *

(2) Pressure test with liquid or gas; or

(3) Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:

(i) Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or

(ii) Existing wells constructed without a long string casing, but with surface casing which terminates at the base of fresh water provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the Director shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.

(c) * * *

(3) For Class III wells where the nature of the casing precludes the use of the logging techniques prescribed at paragraph (c)(1) of this section, cementing records demonstrating the presence of adequate cement to prevent such migration;

(4) For Class III wells where the Director elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by § 146.33(b) shall be designed to verify

the absence of significant fluid movement.

* * * * *

6. In § 146.10 paragraphs (a), (b)(2), (b)(3) and (d) are revised and paragraph (b)(4) is added to read as follows:

§ 146.10 Plugging and abandoning Class I—III wells.

(a) Prior to abandoning Class I—III wells the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. The Director may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

(b) * * *

(2) The Dump Bailer Method;

(3) The Two-Plug Method; or

(4) An alternative method approved by the Director, which will reliably provide a comparable level of protection to underground sources of drinking water.

* * * * *

(d) The plugging and abandonment plan required in 40 CFR § 122.42(f) and § 122.41(e) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under 40 CFR 146.04, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs.

7. In § 146.22 paragraphs (b) (4), (5), (6), and (7) are removed; the introduction to paragraph (b) is redesignated as paragraph (b)(1); the existing paragraph (b)(1) is redesignated as (b)(1)(i); paragraphs (b) (2) and (3) are redesignated as (b)(1) (ii) and (iii) and revised; a new paragraph (b)(2) is added; the introduction to (f)(2)(i), paragraphs (f)(2)(i)(A), (f)(2)(ii)(A), and (g) are revised to read as follows:

§ 146.22 Construction requirements.

* * * * *

(b)(1) * * *

(i) Depth to the injection zone;

(ii) Depth to the bottom of all USDWs; and

(iii) Estimated maximum and average injection pressures;

(b)(2) In addition the Director may consider information on:

(i) Nature of formation fluids;

(ii) Lithology of injection and confining zones;

(iii) External pressure, internal pressure, and axial loading;

(iv) Hole size;

(v) Size and grade of all casing strings; and

(vi) Class of cement.

* * * * *

(f) * * *

(2) * * *

(i) For surface casing intended to protect underground sources of drinking water in areas where the lithology has not been determined:

(A) Electric and caliper logs before casing is installed; and

* * * * *

(ii) * * *

(A) Electric, porosity and gamma ray logs before the casing is installed;

* * * * * *

(g) At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects:

(1) Fluid pressure;

(2) Estimated fracture pressure;

(3) Physical and chemical characteristics of the injection zone.

8. In § 146.23 the introduction to paragraph (b)(2) is revised and a paragraph is added at the end of (b)(2) to read as follows:

§ 146.23 Operating, monitoring and reporting requirements.

* * * * *

(b) * * *

(2) Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:

* * * * *

And recording of one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than 30 days.

* * * * *

9. In § 146.24 paragraphs (a)(4)(iii), (a)(5) and (a)(6) are revised, paragraphs (a)(8) through (a)(12) are removed, paragraphs (a)(13) and (a)(14) are redesignated (a)(8) and (a)(9) respectively, paragraphs (b) and (c) are redesignated (c) and (d) respectively and a new paragraph (b) is added.

§ 146.24 Information to be considered by the director.

* * * * *

(a) * * *

(4) * * *

(iii) Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.

(5) Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth;

(6) Geologic name and depth to bottom of all underground sources of drinking water which may be affected by the injection;

* * * * *

(8) In the case of new injection wells the corrective action proposed to be taken by the applicant under 40 CFR 122.44;

(9) A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by 40 CFR 122.42(g);

(b) In addition the Director may consider the following:

(1) Proposed formation testing program to obtain the information required by § 146.22(g);

(2) Proposed stimulation program;

(3) Proposed injection procedure;

(4) Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an underground source of drinking water;

(5) Plans for meeting the monitoring requirements of § 146.23(b).

* * * * *

10. In § 146.32 the introduction to paragraph (a), and paragraphs (b), (c) and (d) are revised to read as follows:

§ 146.32 Construction requirements.

(a) All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Director may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources of drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

* * * * *

(b) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be

conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(c) Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

(1) Fluid pressure;

(2) Fracture pressure; and

(3) Physical and chemical charateristics of the formation fluids.

(d) Where the injection formation is not a water-bearing formation, the information in paragraph (c)(2) of this section must be submitted.

* * * * *

11. In § 146.33 paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) are revised to read as follows:

§ 146.33 Operating, monitoring, and reporting requirements.

* * * * *

(b) * * *

(1) Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by § 146.34(a)(7)(iii) is incorrect or incomplete, a new analysis as required by § 146.34(a)(7)(iii) shall be provided to the Director.

(2) Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate.

(3) Demonstration of mechanical integrity pursuant to § 146.08 at least once every five years during the life of the well for salt solution mining.

(4) Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by § 146.32(e), semi-monthly.

* * * * *

12. In § 146.34 paragraphs (a)(4), (a)(7)(iii), (a)(8) and (b)(2), are revised to read as follows:

§ 146.34 Information to be considered by the Director.

* * * * *

(a) * * *

(4) Maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

* * * * *

(7) * * *

(iii) Qualitative analysis and ranges in concentrations of all constituents of injected fluids. The applicant may request Federal confidentiality as specified in 40 CFR Part 2. If the information is proprietary an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the Director as part of any enforcement investigation.

(8) Proposed formation testing program to obtain the information required by § 146.32(c).

* * * * *

(b) * * *

(2) A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells pursuant to § 146.08;

* * * * *

13. In § 146.51, paragraph (b)(1) is revised to read as follows:

§ 146.51 Applicability.

* * * * *

(b) It also includes wells not covered in Class IV that inject radioactive material listed in 10 CFR Part 20, Appendix B, Table II, Column 2.

* * * * *

[FR Doc. 82-2802 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-29-M

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40 CFR Part 180

[PP 1F2536/R396; PH-FRL-2040-5]

Cyano(3-Phenoxyphenyl)Methyl-4-Chloro-Alpha-(1-Methylethyl)Benzeneacetate; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on cabbage. This regulation to establish the maximum permissible level for the insecticide in or on cabbage was requested by Shell Oil Company.

EFFECTIVE DATE: Effective on February 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of September 23, 1981 (46 FR 47006) that Shell Oil Co., 1025 Connecticut Ave., NW., Suite 200, Washington, DC 20036, had filed a pesticide petition (PP 1F2536) with the EPA. The petition proposed that 40 CFR 180.379 be amended by establishing a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity cabbage at 10.0 parts per million (ppm). No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included: An acute oral rat toxicity study with median lethal dose (LD_{50}) of 1-3 grams (g)/kilogram (kg) of body weight (bw) (water vehicle) and 450 milligrams (mg)/(kg) of bw (dimethyl-sulfoxide (DMSO) vehicle); a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 ppm with no oncogenic effects at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10-50 ppm for males and 50-250 ppm for females (no oncogenic effects were noted at 1,250 ppm, the highest dose tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested—significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (highest level fed)—no oncogenic effects were observed; a 3-generation rat reproduction study with a NOEL of 250 ppm (highest level fed); teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies: Mouse dominant lethal (negative at 100 mg/kg of bw,

which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); AMES test in vitro (negative); and bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: A hen study negative at 1.0 g/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI) is calculated to be 0.1250 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.500 mg/day (60 kg). Approval of the tolerance for cabbage would result in a theoretical maximum residue contribution (TMRC) of 1.5842 mg/day (1.5 kg) and utilize 21.12 percent of the ADI.

The metabolism of the insecticide is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are currently no regulatory actions pending against the continued registration of this insecticide. The tolerance for residues in or on the meat, fat (including milk fat), and meat byproducts of cattle, goats, hogs, horses, and sheep are adequate to cover secondary residues resulting from the proposed use as delineated in 40 CFR 180.6(a)(2), and there is no reasonable expectation of residues in poultry and eggs as delineated in 40 CFR 180.6(a)(3).

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that establishment of the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before March 5, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: February 3, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: January 20, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.379 is amended by adding and alphabetically inserting the raw agricultural commodity cabbage to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cabbage	10.0
* * * * *	

[FR Doc. 82-2635 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PP 1F2505/R390; PH-FRL-2040-4]

Cyano (3-Phenoxyphenyl) Methyl 4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide cyano (3-phenoxyphenyl) methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity pecans. This regulation to establish the maximum permissible level for residues of the insecticide in or on pecans was requested by Shell Oil Co.

EFFECTIVE DATE: Effective on February 3, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of June 22, 1981 (46 FR 32313) which announced that the Shell Oil Co., 1025 Conn. Ave., NW., Washington, DC 20036, had submitted a pesticide petition (PP 1F2505) proposing that 40 CFR 180.379 be amended by the establishment of a tolerance for the residues of the insecticide cyano (3-phenoxyphenyl) methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity pecans at 0.2 part per million (ppm).

There were no comments received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included: An acute oral rat toxicity study with median lethal dose (LD 50) of 1–3 grams (g)/kilogram (kg) of body weight (bw) (water vehicle) and 450 milligrams (mg)/kg of bw (dimethyl sulfoxide (DMSO) vehicle); a 90-day dog feeding study with a no-observable-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 ppm with no oncogenic effects at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10–50 ppm for males and 50–250 ppm for females (no oncogenic effects where noted at 1,250 ppm, the highest dose tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested) (significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm highest level fed) no oncogenic effects were observed; a 3-generation rat reproduction study with a NOEL of 250 ppm (highest level fed);

teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies; mouse dominant lethal (negative at 100 mg/kg of bw; which was the highest level fed), mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); AMES test in vitro (negative); and a bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: A hen study negative at 1.0 g/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI) is calculated to be 0.1250 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.5000 mg/day (60 kg). Approval of the tolerance for pecans would result in a theoretical maximum residue contribution (TMRC) of 1.4588 mg/day (1.5 kg) and utilize 19.45 percent of the ADI.

The metabolism of the insecticide is adequately understood for this use, and adequate analytical method (gas chromatography) is available for enforcement purposes. There are currently no regulatory actions pending against the registration of this pesticide. The tolerance for residues in or on the meat, fat (including milk fat), and meat byproducts of cattle, goats, hogs, horses, and sheep are adequate to cover secondary residues resulting from the proposed uses as delineated in 40 CFR 180.6(a)(2). There is no reasonable expectation of residues in poultry and eggs as delineated in 40 CFR 180.6(a)(3).

The insecticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, on or before March 5, 1982 file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposed regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishig new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: February 3, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

Dated: January 20, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTION FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.379 is amended by adding and alphabetically inserting the raw agricultural commodity pecans to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl 4-choloro-alpha-(1-methylethyl)benzeneacetate; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Pecans	0.2
* * * * *	

[FR Doc. 82-2636 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6104

[M-41574]

Montana; Partial Revocation of National Forest Withdrawal for Administrative Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial Order which withdrew certain lands as administrative sites for use by the Forest Service. This action will restore approximately 184 acres of land to such forms of disposition as may by law be made of national forest lands.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office 406-657-6291.

By virtue of the authority vested in the Secretary of the Interior, by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Secretarial Order dated November 14, 1906, which withdrew certain lands for administrative sites, agricultural and pasture purposes is hereby revoked so far as it affects the following described lands:

Gallatin National Forest

Principal Meridian

East Deer Creek Administrative Site

"Station 22" approximately located in Tps. 2 and 3 S., R. 15 E., (unsurveyed).

Dry Fork Ranger Station

"Station 25" approximately located in T. 4 S., R. 13 E., (unsurveyed).

The areas described aggregate approximately 184 acres, more or less, in Sweet Grass County.

2. At 8 a.m. on March 5, 1982, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Dated: January 27, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82-2809 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6126

[M-51236]

Montana; Revocation of Public Land Order No. 5952

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes Public Land Order No. 5952, an emergency withdrawal of the Bob Marshall, Scapegoat, and Great Bear Wilderness Areas. The lands were withdrawn from all forms of disposition under all laws pertaining to mineral leasing in response to a resolution adopted by the House Interior and Insular Affairs Committee on May 21, 1981.

EFFECTIVE DATE: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Sue Bosma, Washington, D.C. Office, 202–343–6486.

Pursuant to a judgment and order of the United States District Court for the District of Montana, entered on January 18, 1982, in *Pacific Legal Foundation et al. v. Watt et al.*, CV–81–141 BLG, and *Mountain States Legal Foundation v. Watt et al.*, CV–81–168– BLG, U.S.D.C., Mont., the Secretary of the Interior has been ordered by the court to revoke Public Land Order No. 5952, as issued on June 1, 1981, at the direction of the House Committee on Interior and Insular Affairs. Therefore, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 5952 of June 1, 1981, which withdrew all of the Federal lands in the Bob Marshall, Scapegoat, and Great Bear Wilderness Areas, as designated by Pub. L. 88–577, 92–395, and 95–546 from all forms of disposition under all laws pertaining to mineral leasing and all amendments thereto, is hereby revoked in its entirety. The lands aggregate approximately 1,537,000 acres in Flathead, Lewis and Clark, Missoula, Pondera, Powell, and Teton Counties, Montana.

2. By complying with the judgment and order of the District Court, entered on January 18, 1982, the Secretary of the Interior does not concede the correctness of the legal conclusions in the court's memorandum opinion filed on December 16, 1981, as amended, by an order of the court filed on January 18, 1982.

Dated: January 29, 1982.

James G. Watt,

Secretary of the Interior.

[FR Doc. 82–2810 Filed 2–2–82; 8:45 am]

BILLING CODE 4310–84–M

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43 CFR Part 3200

[Circular No. 2495]

Geothermal Resources Leasing; General

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking is issued under the provisions of the Geothermal Steam Act of 1970 which authorizes the Secretary of Interior to issue leases for geothermal resources. The final rulemaking amends the existing regulations to provide for leasing of fractional or future interests in geothermal resources owned by the Federal Government.

EFFECTIVE DATE: March 5, 1982.

ADDRESS: Any suggestions or inquiries should be sent to: Director (520), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Karl F. Duscher (202) 343–7722.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published in the **Federal Register** on September 1, 1981 (46 FR 43950). Comments were invited for a 60-day period, ending on November 2, 1981. Comments were received only from offices within the Bureau of Land Management. Following review of those comments, clarifying words were added to §§ 3207.2–3(c)(1) and 3207.3–2(c) to indicate that the rental specified in the interim agreement required for leases of future interests is an interim rental and that it will be payable at the rate of $1 per acre or fraction thereof. No other changes were necessary.

The principal author of this final rulemaking is Karl F. Duscher, Division of Mineral and Geothermal Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96–354).

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information required in § 3207.2–2 of this rulemaking does not require clearance by the Office of Management and Budget since there are less than 10 respondents annually. However, the information collection requirements contained in the application provisions under 43 CFR Subpart 3211 have been approved (OMB Clearance No. 1004–0038).

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025), Part 3200, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

David C. Russell,

Acting Assistant Secretary of the Interior.

January 19, 1982.

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

1. Section 3201.2(b) is amended by adding two new sentences to the end of the introductory text as follows:

§ 3201.2 Acreage Limitations.

* * * * *

(b) * * * Where the United States owns a present fractional interest in the geothermal resources in the leased lands, only that portion of the total acreage currently owned by the United States shall be charged as acreage holdings. The acreage embraced in a future interest lease shall not be chargeable as acreage holdings until the future interest vests in the United States.

* * * * *

§ 3202.2–7 [Removed]

2. Section 3202.2–7 is removed in its entirety.

3. Section 3205.3–4 is revised to read as follows:

§ 3205.3–4 Fractional interests.

Rentals and minimum royalties payable under leases for lands in which the United States owns only an undivided present or future fractional interest shall not be prorated, but shall be paid for the full acreage in the leased lands. However, royalty on production from such lands shall be payable in the same proportion to the royalty provided for in § 3205.3–5 of this title as the undivided fractional interest of the United States in the geothermal resources is to the full geothermal resources interest.

4. A new Subpart 3207 is added as follows:

Subpart 3207—Leases for a Fractional or Future Interest

Sec.

3207.1 General.
3207.2 Noncompetitive leases.
3207.2–1 Qualifications.
3207.2–2 Applications.
3207.2–3 Leasing.
3207.2–4 Agency action on applications.
3207.3 Competitive leasing.
3207.3–1 Nominations for leases.
3207.3–2 Leasing

Authority: Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025).

Subpart 3207—Leases for a Fractional or Future Interest

§ 3207.1 General.

Leases for lands in which the United States owns only a fractional or future interest in geothermal resources may be issued whenever the public interest will be best served thereby. Where the United States owns both a present and a future interest in the geothermal resources in a tract, these interests may

be leased separately or together at the discretion of the authorized officer.

§ 3207.2 Noncompetitive leases.

§ 3207.2-1 Qualifications.

Qualifications for noncompetitive lease applicants for either a fractional present or future interest in geothermal resources will be the same as those appearing in Subpart 3202 of this title with the exception that applicants for a lease of a noncompetitive future interest shall own, hold, or control at least 50 percent of the present operating rights in the geothermal resources.

§ 3207.2-2 Applications.

Applications for a noncompetitive lease for either a fractional present or future interest in geothermal resources owned by the United States shall be filed and adjudicated in accordance with Subpart 3210 of this title except for qualifications in § 3207.2-1 of this title. In addition, such applications shall include:

(a) A statement describing the extent of the applicant's present or future operating rights to the geothermal resources in a tract other than those resources owned by the United States in the lands covered by the application, together with:

(1) A certified abstract of title or certificate of title containing record evidence of the creation of such interest(s) in the geothermal resources (abstracts will be returned to the applicant when final action has been taken on the application), and

(2) A copy of the lease or contract if the applicant has acquired any of the operating rights to the described interest(s).

(b) The name of the Government agency administering the surface lands that must consent before a lease can be issued; or

(c) The name of the agency that may have records establishing ownership of the geothermal resources involved; and

(d) Identification of the project, if any, of which the lands are a part.

(Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information required in § 3207.2-2 of this title does not require clearance by the Office of Management and Budget since there are less than ten respondents annually)

§ 3207.2-3 Leasing.

(a) A lease of a fractional present interest shall contain the same terms and conditions, including the rentals, as are included in leases for lands in which the United States owns the full interest in the geothermal resources. The acreage of the lease shall be chargeable according to § 3201.2 of this title.

(b) A lease of a future Federal geothermal interest shall become effective on the date that the interest in the geothermal resources vests in the United States. The terms and conditions of the lease shall be the same as for a noncompetitive lease of a present interest issued under this part. The acreage in the lease shall become chargeable according to § 3201.2 of this title when the lease becomes effective.

(c) As consideration for the issuance of a lease of a future Federal geothermal interest, the applicant for a noncompetitive lease shall execute an interim agreement on a form approved by the Director, Bureau of Land Management. This agreement shall govern the relationship between the lessee and the United States until the date the lease becomes effective. The agreement shall provide that:

(1) The applicant pay a minimum annual rental of $1 per acre or fraction thereof until the future interest of the United States becomes possessory; and

(2) When a present interest in geothermal resources is relinquished, terminated, or cancelled, the interim agreement or lease of a future interest on the parcel involved shall be deemed to have been relinquished, terminated, or cancelled in the same manner and to the same degree; and

(3) No assignment of the interim agreement and the lease of a future interest shall be approved without a concurrent transfer, to the same extent and to the same party, of the rights to the present interest in the leased lands.

(d) The authorized officer shall not:

(1) Issue leases requiring consent of a Government agency until the applicant executes stipulations required by the consenting agency.

(2) Issue a lease for the Federal interests in the geothermal resources on a parcel to a person who, with the Federal interest, would control less than 50 percent of all interest in the operating rights to the geothermal resources in a parcel, unless the Secretary determines it is in the public interest to do so.

§ 3207.3 Competitive leasing.

§ 3207.3-1 Nominations for leases.

No special form is required for requests or nominations of eligible parcels. Nominations or requests to have leases offered competitively for lands known to contain geothermal resources shall, to the extent possible, include the information required for noncompetitive leases under § 3207.2-2 of this title.

§ 3207.3-2 Leasing.

(a) Fractional or future interests in geothermal resources owned by the United States in lands situated within a KGRA shall only be available for leasing under the provisions of this subpart and the provisions of subpart 3220 of this title.

(b) A lease of a future interest will become effective on the date that the interest in the geothermal resources vests in the United States. Its terms and conditions, including rental and royalty payments, shall be the same as for a lease of a present interest issued competitively under Subpart 3220 of this title. The acreage in the lease shall become chargeable according to § 3201.2 of this title when the lease becomes effective.

(c) Prior to the issuance of a lease of a future interest, the highest bona fide bidder shall execute an interim agreement on a form approved by the Director, Bureau of Land Management which will govern the relationship between the lessee and the United States until the date the lease becomes effective. The agreement shall require payment of an annual interim rental at the same rate as specified under the terms of the lease of the future interest.

(d) If the controlling owner or holder of the present rights in an offered tract, is not the high bidder at the lease sale, such party shall be given an opportunity to meet the highest bona fide bid submitted for the tract. Failure to do so within the time allowed, or failure to submit any bid for the offered tract, shall be considered a waiver of all rights to the competitive lease and the lease shall be awarded to the highest qualified bidder. In the event there are two or more holders of a present interest in an offered tract who have equal rights and are willing to meet the highest bona fide bid on the offered tract, the right to meet the highest bona fide bid shall be determined by a drawing conducted by the authorized officer within 30 days after the bids are opened. These provisions are in addition to the provisions under § 3220.6 of this title.

(e) The authorized officer shall not issue leases requiring consent of a Government agency until the highest bona fide bidder executes stipulations required by the consenting agency.

[FR Doc. 82-2826 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Amdt. No. 1 to Service Order No. 1498]

Oklahoma, Kansas and Texas Railroad Company Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Service Order No. 1498.

SUMMARY: Pursuant to section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes the Oklahoma, Kansas and Texas Railroad Company (OKKT) to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for those operations. This order permits OKKT to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., January 31, 1982, and continuing in effect until 11:59 p.m., May 15, 1982, unless otherwise modified, amended or vacated by order of this Commission.

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

SUPPLEMENTARY INFORMATION:

Decided: January 28, 1982.

Upon further consideration of Service Order No. 1498 (46 FR 55705), with respect to its extension which is the subject of litigation before the United States Court of Appeals for the Seventh Circuit, and upon consideration of the Record Carrier Competition Act, Pub. L. 97–130 (December 29, 1981), which clarifies our authority with respect to the use of Section 122 of RITEA and in connection with this order, we are exercising our authority to its fullest extent by extending this order. In so doing we assure that if, in the pending litigation, our order is upheld the service authorized may be instituted without undue delay, and good cause appearing therefor:

§ 1033.1498 [Amended]

It is ordered, That § 1033.1498 *Oklahoma, Kansas and Texas Railroad Company Authorized to use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee).* Service Order No. 1498 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 15, 1982, unless otherwise modified, amended, or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 31, 1982.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment 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 by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-2747 Filed 2-2-82; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1125

[Ex Parte No. 293 (Sub-No. 2)]

Standards for Determining Rail Service Continuation Subsidies in the Northeast-Midwest Region of the United States

AGENCY: Interstate Commerce Commission.

ACTION: Amendment to the standards.

SUMMARY: On October 16, 1981, the Rail Services Planning Office (RSPO) proposed that the Standards for Determining Rail Service Continuation Subsidies in the Northeast-Midwest Region of the United States (regional standards) be amended to apportion train supplies and expenses on a loaded freight train car basis. RSPO has determined that this basis is the most logical and equitable because the accounts involved are all freight car related. Accordingly, § 1125.8(c)(1)(i) of the standards will be amended to apportion train supplies and expenses on the basis of loaded freight train cars handled on the branch.

EFFECTIVE DATE: This amendment is effective March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Winston Warner, (202) 275–0841.

SUPPLEMENTARY INFORMATION: On October 16, 1981 (46 FR 50998, October 16, 1981), RSPO published a notice of proposed rulemaking in response to a petition filed by the New York State Department of Transportation (NYDOT) requesting that § 1125.8(c)(1)(i) of the regional standards be amended to include a new method for allocating train supplies and expenses. In that notice, we proposed that these costs be allocated on the basis of loaded freight train cars. NYDOT suggested a train-mileage basis.

Comments were received from NYDOT and Conrail. Upon assessing these comments and conducting further analyses, we conclude that apportionment on the basis of loaded freight train cars is the best method. The primary concerns raised by the parties are discussed below. They pertain to the method of assignment and the retroactivity of the new allocation method.

Allocation Method for Train Supplies and Expenses

New York DOT stated that they were opposed to our proposal to compute train supplies and expenses on the basis of loaded freight train cars handled on the branch. They prefer a cost per loaded car mile basis because they believe it is the least costly allocation methodology.

As support for its position, NYDOT prepared an analysis based on 1976–1977 subsidy year data using four different allocation factors for the assignment of train supplies and expenses. These factors were (1) cost per train hour (current methodology), (2) cost per loaded freight car (RSPO's proposed methodology), (3) cost per loaded car mile (NYDOT's proposed methodology), and (4) cost per train mile. Using Conrail's 1977 Annual Report Form R–1, NYDOT developed the following unit costs and total costs based on 1976–1977 data from USRA Line 90 (Emeryville to Edwards, NY.)

1977 DATA

Total account 402—freight	$54,956,000
Total carloadings (AAR data)	4,750,860
Total loaded car miles	2,016,044,000
Total train hours—freight	3,408,340
Total train miles—freight	51,222,606

COST FACTORS

a. Cost per train hour	$16.12
b. Cost per car	11.57
c. Cost per car mile	.027
d. Cost per train mile	1.07

USRA LINE 90

Basis	Cost: Account 402 (train supplies and expenses)
a. Train hour (freight)	$5,013
b. Loaded car	2,140
c. Loaded car mile	58.91
d. Train mile (freight)	1,268

As a result of this analysis, NYDOT asserts that their proposed formula of loaded car miles is the least costly while our proposed basis of loaded cars is the second most costly.

NYDOT further contends that train supplies and expenses accrue as a function of distance and, as a result, a cost per car mile basis is the fairest approach. They note that a mainline train passes through several yards over a long distance and, therefore, requires inspections and lubrication. However, they assert that a branch line train travels short distances at moderate to slow speeds causing little wear and tear and, therefore, has little or no need for inspection.

We have a number of concerns with NYDOT's position. First, NYDOT's analysis is not current. It fails to reflect the new Uniform System of Accounts (USOA) which the Interstate Commerce Commission adopted on January 1, 1978. Accordingly, their analysis is accurate only for those subsidy years prior to January 1, 1978 when the old USOA applied.

The new USOA calls for a different accounting treatment of Account 402, Train Supplies and Expenses. Basically, it fragments this account into 27 subaccounts. Of these 27 subaccounts, only four are still subject to allocation. The remaining accounts are all determined on an actual basis. The four assignable accounts are Engine Crews-Materials, Account 21–31–56; Train Crews-Materials, Account 21–31–57; Train Inspection and Lubrication-Salaries and Wages, Account 11–31–62; and Train Inspection and Lubrication-Materials, Account 21–31–62. These four accounts reflect approximately 60% of the total cost of train supplies and expenses. (This 60% figure is based on RSPO's analysis of the 27 subaccounts from Conrail's 1980 Annual Report Form R–1.)

Since NYDOT's analysis does not reflect the new USOA accounting treatment, we conducted our own analyses using the new USOA format for 7 different Conrail light-density lines. Our findings as to the cost consequences of the various allocation methodologies and their relationship to the four assignable accounts differs from NYDOT's conclusions. The analysis is as follows:

1980 CONRAIL DATA

Total account 402 freight (form R–1) (based on USOA cross reference)	$99,884,000
Total carloadings (QCS)	4,172,009
Total loaded car miles (OSA)	1,530,559,000
Total train miles (OSA)	42,907,619

SYSTEM COST FACTORS

a. Cost per loaded car	$23.991463
b. Cost per loaded car mile	.06526
c. Cost per train mile	2.327885

BRANCH DATA

USRA line segment	Carloads	Car miles	Train miles
Pa. 180 (at Lebanon)	204	133,951	117
Pa. 197B (North Reading to Hamburg)	427	231,644	3,540
Pa. 344 (Bridgerille to Sygan)	42	9,287	31
Pa. 916 (Manheim to White Oak)	26	16,308	33
N.J. 1105 (Bradley Beach to Bay Head Jct.)	203	24,240	841
Mass. 23/24 (Buzzards Bay to Falmouth)	273	155,793	1,365
Mass. 33 (Needham Jct to West Roxbury)	119	123,972	516

BRANCH TOTAL OPERATING COST—TRAIN SUPPLIES AND EXPENSES

	Train-hour basis [1]	Car load basis	Car-mile basis	Train-mile basis
Pa. 180	$3,382	$4,884	$8,742	$272
Pa. 197B	14,110	10,223	15,117	8,240
Pa. 344	667	1,006	606	72
Pa. 916	281	662	1,064	76
N.J. 1105	2,251	4,860	1,582	1,957
Mass. 23/24	6,153	6,536	10,167	3,178
Mass. 33	2,893	2,849	8,090	1,201

[1] Actual train supplies and expense computed using current methodology basis (train hours) as reported by Conrail.

Our analysis of Conrail's seven light density lines based on the new USOA, shows that, in most cases, the most costly formula for allocating train supplies and expenses is NYDOT's proposed loaded car mile basis. The current basis of train hours and our proposed basis of carloads fall in the middle range. The least costly basis was train miles. Accordingly, NYDOT's cost findings are inconsistent with our cost findings under the new USOA.

Second, and most importantly, our review of the four assignable subaccounts under the new USOA shows that these accounts are primarily related to the inspection and cleaning of freight cars. They include activities such as the cleaning of freight cars, handling of grain doors, purchase of caboose supplies, coupling and uncoupling of freight cars and freight car inspection by brakemen and trainmen. Also, contrary to NYDOT's position that branch line equipment requires little or no inspection, inspections are required for each passage through a yard regardless of miles travelled. In many instances when a branch line car is returned empty it must be cleaned before it can be reloaded. Thus, the train supplies and expenses allocated to the branch do not relate to the number of miles travelled, as NYDOT suggests, but rather to the number of cars cleaned and inspected. The car mile basis requested by NYDOT is just not relevant to the type of activities and costs generated by train inspection and cleaning.

In sum, given the accounting changes under the new USOA and the direct relationship of the four assignable accounts to the cleaning and inspection of freight cars, we believe that the most applicable basis for assigning train supplies and expenses is loaded freight train cars. This methodology directly reflects the inspection and cleaning of cars and from a cost standpoint is a reasonable approach. On the other hand, the car mile basis proposed by NYDOT is the least equitable. It has no bearing on the number of cars cleaned and inspected and it appears to be the most costly approach under the new USOA. The other two methodologies, train hours (the current method) and train miles, are also inappropriate because they fail to relate to the car related expenses of inspections and cleanings.

Retroactivity of the Amendment

NYDOT in its original petition requested that the amendment be applied retroactively to April 1, 1977. They see no problem in doing this because the second and subsequent subsidy years have not yet been subject to final audits. It is their position that the legitimate costs under the regional standards cannot be determined until this audit is performed. Thus, in effect, NYDOT is arguing that the parties, who have agreed to use the subsidy standards, will suffer no hardship because the legitimate costs associated with the subsidy as of April 1, 1977 have yet to be finalized.

Conrail disagrees. They state that any change in the apportionment of a specific unit of cost on a retroactive basis would be prejudicial and improper.

RSPO agrees with Conrail that this amendment should not apply retroactively. Such an action would be inconsistent with prior RSPO decisions in which amendments to the regional standards have not been made retroactive to prior subsidy years. Also, we do not want to establish a precedent whereby calculations on which parties relied in prior subsidy years can be subsequently altered. Moreover, in the instant case, retroactive application would not only affect the parties

involved in this proceeding but also operators and State DOT's in all the northeastern and midwestern states. For the above reasons, the allocation of train supplies and expenses will not be retroactive to subsidy years prior to January 1, 1981.

We should note that although Conrail supports our allocation methodology, it objects to the institution of this rulemaking. Conrail does not believe that NYDOT's premise that there may be a more equitable or appropriate method of allocating train supplies and expenses constitutes grounds for a new rulemaking. They specifically state that they are "opposed to new rulemaking proposals which are based upon isolated and individual revisions of costing methodology except where there has been an oversight in the recognition of a basic cost."

As we discussed before, because of the changes under the new USOA only four subaccounts need to be allocated. The other subaccounts are all determined on an actual basis. Accordingly, it is appropriate for RSPO to review the four subaccounts to determine if the current method for allocating train supplies and expenses is the most relevant, accurate and equitable method. This review is certainly consistent with RSPO's broad statutory authority to amend the standards as necessary. Moreover, RSPO's reopening of the standards has always been in the interest of ensuring that the best and most appropriate methodologies are used.

This is not a major Federal action significantly affecting the quality of the human environment, or the conservation of energy resources.

Final Regulatory Flexibility Analysis as Required by 5 U.S.C. 601

This action will alter the basis for the assignment of train supplies and expenses for all rail lines operated under a subsidy agreement pursuant to the regional standards. All shippers, both large and small, located on these subsidized lines will be affected. However, we certify that there will be no increase or changes to the present requirements of businesses located on these lines. We also certify that amending the basis for determining train supplies and expense could reduce the overall subsidy amount. However, any reduction would be minimal because this category of expense constitutes a very small portion of the total cost associated with the operation of a branch line. As a result, we find that this action will not have a significant economic impact on a substantial number of small entities.

Copies of our analysis of the impact of this action are available from the Section of Rail Services Planning, Room 5355, Interstate Commerce Commission, Washington, D.C. 20423.

(49 U.S.C. 10362)

Issued January 29, 1981 by William R. Southard, Director, Rail Services Planning Office.

By the Commission.

Agatha L. Mergenovich,

Secretary.

PART 1125—STANDARDS FOR DETERMINING RAIL SERVICES CONTINUATION SUBSIDIES

Section 1125.8(c)(1)(i) is revised as follows:

§ 1125.8 Apportionment rules for the assignment of expenses to on-branch costs.

* * * * *

(c) *Transportation.*—(1) *Train Operations:* (i) *Engine Crews—Materials Account 21–31–56; Train Crews—Materials 21031–57; Train Inspection and Lubrication—Salaries and Wages, Account 11–31–62 and Train Inspection and Lubrication—Materials Account 21–31–62.* If the branch is served by a local/way or through train, the costs in these accounts shall be assigned to the branch on the ratio of the loaded freight train cars on the branch to the total system loaded freight train cars.

* * * * *

[FR Doc. 82–2774 Filed 2–2–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

Tanner Crab Off Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, National Marine Fisheries Service, has determined that the desired harvest level of 550,000 pounds of Tanner crab for the Southern District in Registration Area H will be achieved on January 31, 1982, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce, therefore, issues this notice of closure of the Southern District in Registration Area H to fishing for Tanner crab by vessels of the United States on January 31, 1982, thereby adjusting the previous closing date of April 30, 1982, in order to prevent overfishing of Tanner crab stocks in the Southern District.

DATE: This closure is effective from 12:00 noon, AST, January 31, 1982, until 11:59 p.m., ADT, April 30, 1982. Public comments on this notice of closure are invited until February 15, 1982.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907–586–7221.

SUPPLEMENTARY INFORMATION: The fishery management plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), governing this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments, by field order, to season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under the criteria set out in that section.

Southern District

50 CFR 671.26(e) establishes six districts within Registration Area H (Cook Inlet area) so as to prevent overfishing of individual Tanner crab stocks by allowing closure of a particular district when the desired harvest level in that district is reached. The FMP states that there are "three Tanner crab stock units within the Cook Inlet area that are separated geographically." One of these stock units is the Southern, or Kachemak Bay, stock. 50 CFR 671.26(e)(2)(i) currently provides that the season for harvest of Tanner crab by vessels of the United States in the Southern District of Area H is December 1 through April 30.

The overall optimum yield (OY) specified under the FMP for all of Registration Area H is 5.3 million pounds; this OY is not further subdivided by District. The State of Alaska's 1981 Tanner crab index survey indicates that the total population of legal male Tanner crab in the Southern District is lower than prior levels, at only 1,105,000 pounds. The State of Alaska has calculated the desired harvest level in the Southern District during 1981–82 to be 550,000 pounds, using a biologically sound exploitation rate of 0.50. A good correlation has existed for the past 6 years between the number of legal male Tanner crab

caught per pot during the State of Alaska index survey and the resulting commercial harvest. Catch per unit of effort (CPUE) from December 1, 1981, through the period January 11–17, 1982, declined 50 percent, from 13.2 crabs per pot to 6.4 crabs per pot. The declining CPUE substantiates the results of the index survey and indicates that the optimum yield prescribed in the FMP cannot be achieved without harm to the resource. It is estimated that the desired harvest of 550,000 pounds of crab will be achieved on January 31, 1982.

In light of this information, the Regional Director, National Marine Fisheries Service, in accordance with 50 CFR 671.27(b), has determined:

1. That the actual condition of Tanner crab stocks in the Southern District is substantially different from the condition that was previously anticipated; and

2. That this difference reasonably supports the need to protect those Tanner crab stocks by closing the Southern District to further fishing for Tanner crab during the current fishing year after 12:00 noon, Alaska Standard Time, on January 31, 1982.

For these reasons, the Southern District of Registration Area H (Cook Inlet), as defined in 50 CFR 671.26(e)(1)(ii), is closed to all fishing for Tanner crab from 12:00 noon, Alaska Standard Time, January 31, 1982, until 11:59 p.m., Alaska Daylight Time, April 30, 1982, at which time the closure of this district prescribed in 50 CFR 671.26(e)(2)(i) shall begin.

This notice is effective upon filing for publication in the **Federal Register** and after publication for 48 hours through ADF&G procedures, under 50 CFR 671.27(a)(2). Under 50 CFR 671.27(b)(4), public comments on this notice of closure may be submitted to the Regional Director at the address stated above for 15 days following the effective date. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m.) at the NMFS Alaska Regional Office, Federal Building, Room 483, 709 West Ninth Street, Juneau, Alaska 99802. The necessity of this closure will be reconsidered in light of the comments received and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

The Kachemak Bay Tanner crab stock will be subject to damage by overfishing unless this order takes effect promptly. I therefore find for good cause that advance notice and public comment on this order is contrary to the public interest, and that there should be no delay between its publication and its effective date.

This action is taken under the authority of the regulations specified at 50 CFR 671.27, and is taken in compliance with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. In addition, it does not contain any collection of information request, as defined in the Paperwork Reduction Act of 1980.

Dated: January 29, 1982.

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

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service

[FR Doc. 82-2814 Filed 2-2-82; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 23
Wednesday, February 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. 1

Petitions for Rulemaking; Issuance of Quarterly Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of quarterly report.

SUMMARY: The Nuclear Regulatory Commission has issued the December 31, 1981, Quarterly Report on Petitions for Rulemaking. This report is issued in accordance with 10 CFR 2.802 and is a quarterly summary of petitions for rulemaking that are pending final action.

ADDRESSES: A copy of this report, designated NRC Petitions for Rulemaking—December 31, 1981, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Requests for single copies of this report, or a request to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, Telephone: 301–492–7086 or Toll-free: 800–368–5642.

Dated at Bethesda, Maryland, this 27th day of January, 1982.

For the Nuclear Regulatory Commission.

J. M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 82-2801 Filed 2-2-82; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 50

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to incorporate by reference new addenda of the ASME Boiler and Pressure Vessel Code. The sections of the ASME Code being incorporated provide rules for the construction of nuclear power plant components and specify requirements for inservice inspection of those components. Adoption of these amendments would permit the use of improved methods for construction and inservice inspection of nuclear power plants.

DATES: Comment period expires May 5, 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.

ADDRESS: Written comments or suggestions may be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. E. Baker, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 443–5893.

SUPPLEMENTARY INFORMATION: On December 31, 1981, the Nuclear Regulatory Commission published in the **Federal Register** (46 FR 63208) amendments to its regulation, 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," which incorporated by reference new addenda to the ASME Boiler and Pressure Vessel Code. The amendment revised § 50.55a to incorporate by reference the 1980 Edition of the ASME Code and Addenda through the Winter 1980 Addenda to Section III, Division 1, "Rules for the Construction of Nuclear Power Plant Components," and Section XI, "Inservice Inspection of Nuclear Power Plant Components," of the ASME Boiler and Pressure Vessel Code. The Summer 1981 Addenda to the ASME Code have been issued. The Commission proposes to amend § 50.55a to incorporate by reference the Summer 1981 Addenda modifying Section III, Division 1 of the ASME Boiler and Pressure Vessel Code.

Some of the changes effected in the addenda which would be incorporated through the adoption of the proposed amendments are:

1. Article NCA–3000 of Section III was revised to add a requirement that N, NA and NPT certificate holders be responsible for documentation of the review and approval of materials used by them and the preparation, accumulation, control, and protection of required records while in their custody. Also, the owner must review the meterials documentation to verify that the Code Edition, Addenda, and Code Cases used satisfy NCA–1140 and are acceptable to the regulatory and enforcement authorities.

2. Article NCA–8000 of Section III was revised editorially to make it easier to read and understand. Also, two new provisions, NCA–8240(c) and NCA–8430, were added. NCA–8240(c) describes the provisions that must be met if a name plate is to be removed from an item which has been installed in a nuclear power plant system. NCA–8430 describes how each Code Data Report must be referenced on the Data Report Form.

3. Article NB–3500 of Section III was revised to remove the nomenclatures "normal duty valve," "severe duty valve," "standard valve," and "expected cycle," but there were no technical changes associated with dropping these nomenclatures.

4. Article NB–6000 was given an extensive editorial rewrite which mainly reorganized the paragraphs into a more comprehensible form. Also added were a subarticle on special test procedures and a subparagraph allowing the hydrostatic testing of pump and valve subassemblies.

Paperwork Reduction Act Statement

As required by Pub. L. 96–511, this proposed rule will be submitted to the Office of Management and Budget for clearance of the recordkeeping requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their serivce areas, this proposed rule does not fall within the purview of the Act.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 50 is contemplated.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 reads as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended; (42 U.S.C. 2234). Sections 50.100–50.102 issued under sec. 186, 68 Stat. 955; (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended; (42 U.S.C. 2273), § 50.54(i) issued under sec. 161i, 68 Stat. 949; (42 U.S.C. 2201(i)); §§ 50.70, 50.71 and 50.78 issued under sec. 161o, 68 Stat. 950, as amended; (42 U.S.C. 2201(o)) and the Laws referred to in Appendices.

2. In § 50.55a, paragraph (b)(1) is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1980 Edition and addenda through the Summer 1981 Addenda.

Dated at Bethesda, MD this 8th day of December 1981.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-2831 Filed 2-2-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 406]

Isle St. George Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is considering the establishment of an American viticultural area in the State of Ohio knows as "Isle St. George." This proposal is the result of a petition from Meier's Wine Cellars, a bounded winery in Ohio. The establishment of viticultural areas and the use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from, and will enable consumers to better identify the wine they purchase.

DATE: Written comments must be received by March 5, 1982.

ADDRESS: Send comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, Attention: Notice No. 406.

Copies of the petition, the proposed regulations, the appropriate map, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202–566–7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definitive viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historic or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographic characteristics (climate, soil, elevation, physical features, etc.), which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which are found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition to establish the first viticultural area within the State of Ohio. The proposed area is an island and would be known as "Isle St. George." This island is located entirely within Ottawa County, Ohio, in western Lake Erie, and is the northernmost of the Bass Islands. Isle St. George is the farthest of the Bass Islands from the mainland and is about 18 miles from Port Clinton, Ohio. Isle St. George is approximately one square mile in size, and is roughly 1 and ½ miles wide and slightly less than that in length.

The petitioner, Meier's Wine Cellars, is a bonded winery located in Silverton (Post Office Cincinnati), Ohio. The petitioner bases the petition on the following information:

(a) The name Isle St. George is well established. This name has been associated with North Bass Island since at least 1903. The 1903 edition of the U.S.G.S. quadrangle map, "Put-in-Bay," identifies the community on North Bass Island as "Isle St. George."

A post office has existed on the island since 1874, and the "Isle St. George" cancellation is currently in use. The petitioner, Meier's Wine Cellars, has been using the "Isle St. George" designation on its labels since 1943 to identify wines made from grapes grown on the island.

(b) Isle St. George was first settled in 1844. The name Isle St. George is derived from the first settler on the island, a man named George.

The island has a long history of grapegrowing. The first grapes were planted on the island in 1853 by Peter and Simon Fox. By the turn of the century, there were two wineries on the island to process grapes. Today there are approximately 350 acres of grapes on the island and grape-growing is the primary occupation of the inhabitants of the island. The petitioner states that Catawba grapes have been cultivated continuously on Isle St. George for over 117 years, and that other grapes are also grown there. All grapes grown on Isle St. George are sent to the Ohio mainland for processing since there are no wineries on the island.

(c) Isle St. George is relatively flat and the petitioner states that no point is more than 14 feet above the surface of Lake Erie (mean elevation 571 feet). The soil on the island is shallow, sandy loam and silt loam. The limestone bedrock in some areas is only 20 to 30 inches deep.

(d) The climate of Isle St. George is significantly different than surrounding areas. Growing conditions on the island are affected by the moderating thermodynamic effects of the waters of Lake Erie. During the spring and summer months, the lake water absorbs heat. In the fall, as the air becomes cooler, lake water gives up accumulated heat to the surrounding air and land, thus warming the island. As a result, the first frost is delayed and the growing season is prolonged. According to the study *Resources of the Lake Erie Region,*[1] Isle St. George has a frost-free period of 206 days, longer than any other area in the State of Ohio. In the spring, frozen lake waters cool the air surrounding the island and retard the opening of the grape buds until all danger from frost and unseasonable cold spells has passed.

(e) The average annual precipitation for Isle St. George is less than the average for adjacent areas. Isle St. george averages 26.7 inches of precipitation per year compared to 31.7 inches for nearby Kelly's Island, and 32.1 inches for Sandusky.[2]

Public Participation

ATF requests comments from all interested persons concerning the proposed viticultural area. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on this proposed viticultural area should submit his or her request, in writing, to the Director within the 30-day comment period. The Director reserves the right to determine whether a public hearing should be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities. This rule, if adopted, will allow the petitioner or other persons to use an appellation of origin, "Isle St. George," on wine labels and in wine advertising. This term has been used for these purposes since at least 1943 and may currently be used. ATF has, therefore, determined that this rule neither imoses new requirements on the public nor removes existing privileges available to the public. Adoption of this proposed rule will not result in any economic or administrative costs to the public, but will grant to the petitioner or other persons an intangible economic benefit. This proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have a 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.

Drafting Information

The principal author of this document is Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended by adding § 9.51. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.51 Isle St. George.

* * * * *

Par. 2. Subpart C is amended by adding § 9.51. As added, § 9.51 reads as follows:

§ 9.51 Isle St. George.

(a) *Name.* The name of the viticultural area described in this section is "Isle St. George."

(b) *Approved maps.* The approved map for determining the boundary of the Isle St. George viticultural area is the U.S.G.S. quadrangle map, "Put-in-Bay, Ohio," 7.5 minute series.

(c) *Boundaries.* The Isle St. George viticultural area is located entirely within Ottawa County, Ohio. The boundary of the Isle St. George viticultural area is the shoreline of the island named "North Bass Island" on the "Put-in-Bay, Ohio" U.S.G.S. map, and the viticultural area comprises the entire island.

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[1] *Resources of the Lake Erie Region,* Ohio Department of Natural Resources, Ohio State University Press, 1977.

[2] Ibid.

Signed: December 21, 1981.

G. R. Dickerson,

Director.

Approved: January 15, 1982.

John M. Walker, Jr.,

Assistant Secretary Enforcement and Operations.

[FR Doc. 82-2813 Filed 2-2-82; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[SPA 18.02]

Permanent State Regulatory Program of Virginia

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) is considering modifying the deadline for Virginia to meet two of the conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Based on a request by the State, the Secretary is proposing to extend the deadline for the State to resolve the two conditions.

DATE: Comments must be received by 5:00 p.m. on February 11, 1982, at the address below.

ADDRESS: Written comments must be mailed to: Administrative Record Number SPA-18.03, Office of Surface Mining, Room 5413-L, South Interior Building, 1951 Constitution Avenue, NW., Washington, D.C. or may be hand delivered to the Office of Surface Mining, Room 239, South Interior Building, 1951 Constitution Avenue, NW., Washington, D.C. or to the Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343-5351

SUPPLEMENTARY INFORMATION: Under 30 CFR 732.13(i), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The correction of each deficiency is a condition of the approval. The conditional approval terminates if the conditions are not met according to the schedule. The dates are established in consultation with the State based on regulatory and administrative needs of the State's permanent program, the time required for changes to be adopted under State procedures or legislative schedules, and impact on SMCRA implementation.

The Virginia program was conditionally approved on December 15, 1981 (46 FR 61088-61115). In the notice of approval the Secretary published the schedule for Virginia to resolve each of 19 conditions on the approval of that State's regulatory program. In a letter to the Director, OSM, dated January 28, 1982, the Virginia Department of Conservation and Economic Development indicated that it would like an extension for meeting conditions "o" and "r," as listed at 46 FR 61115, December 15, 1981 (See Administrative Record No. VA376). Copies of the State's letter of request and the above-cited **Federal Register** notice are available for public review during regular business hours at the location listed above under "Address."

Condition "o" stipulates that the Secretary's approval of the Virginia program will terminate on February 15, 1982, unless Virginia submits to the Secretary by that date provisions which amend its program by deleting the program narrative rationale of "significant legal and financial commitments" (SLFC) which provides that mere ownership of mineral rights or the right to mine constitutes a significant legal and financial commitment and provide affirmative assurance that SLFC will be interpreted in accordance with Federal law. If this is accomplished by a policy statement, it must be accompanied by a legal opinion which states that it is enforceable under existing State law and regulations. Inasmuch as the State indicated in its January 28, 1982 letter that it intends to meet this condition by proposing a regulatory change, the State has requested an extension of the deadline until October 15, 1982. The Secretary proposes to allow the State until October 15, 1982, to meet the conditions.

The Secretary believes that extension of this deadline would not render the deficiency major because of the following reasons. In the January 28 letter, Virginia stated that if an unsuitability petition should be filed in which the issue of SLFC arises so that it becomes relevant to the petition, the provisions for administrative extension of time pursuant to Virginia Regulation V764.17(a) prior to the holding of a hearing on such petition would provide more than adequate time within which the regulatory change could be made to satisfy condition "o" without delay in processing the petition. Further, the State said that it is doubtful that any petition, whether affected by the definition of SLFC or not, could be processed within the extended time requested for correcting the deficiency. However, the Secretary specifically requests comments on whether the extension would render the deficiency major, as that term is used under 30 CFR 732.17(i).

Condition "r" stipulates that the Secretary's approval of the Virginia program will terminate on February 15, 1982, unless Virginia submits to the Secretary by that date copies of revised policy statement or otherwise amends its program to make its coal haul roads policy consistent with the Federal requirements. This policy must be accompanied by a legal opinion which states that it is enforceable under existing State law and regulations. Inasmuch as the State indicated in its January 28, 1982 letter that it proposes to submit legislation to the Virginia General Assembly in the current session that may impact the State's approach in meeting the condition, the State has requested at least a 30 day extension of the February 15, 1982 deadline. The Secretary proposes to allow the State until April 1, 1982, to meet the condition.

Since the State will not have completed the issuance of permanent program permits during the proposed extended period allowed for the deficiencies to be corrected, the Secretary believes that extension of this deadline would nor render the deficiency major. Section 506 of SMCRA requires surfacr coal mining operations under an approved State program to be permitted no later than eight months after the State program approval. However, the Secretary specifically requests comments on whether the extension would render the deficiency major, as that term is used under 30 CFR 732.17(i).

The comment period ending on February 11, 1982, is relatively brief. However, this relatively brief comment period is necessary to enable the Secretary to make his final decision on the proposed extensions before the existing deadline expires.

The Office of Management and Budget has granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291. Therefore, this rule is exempt

from the Determination of Effects requirements of the Executive Order.

This rule is deemed not to be a major Federal action within the meaning of section 102(2)(c) of NEPA. It is hereby designated as a categorical exclusion from the NEPA process. Therefore, this rule is exempt from the requirements of an Environmental Assessment, EIS or FONSI.

The primary author of this rule is Richard Bryson, State Program Specialist, 343–5361, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining.

Dated: January 29, 1982.

J. R. Harris,

Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, 30 CFR Part 946 is proposed to be amended by revising § 946.11(o) and (r) to read as follows:

§ 946.11 Conditions of State regulatory approval.

* * * * *

(o) The approval found in § 946.10 will terminate on October 15, 1982, unless Virginia submits to the Secretary by that date provisions which amend its program by deleting the program narrative rationale of "significant legal and financial commitments" (SLFC) which provides that mere ownership of mineral rights or the right to mine constitutes a significant legal and financial commitment and provides affirmative assurance that SLFC will be interpreted in accordance with Federal law. If this is accomplished by a policy statement, it must be accompanied by a legal opinion which states that it is enforceable under existing State law and regulation.

* * * * *

(r) The approval found in § 946.10 will terminate on April 1, 1982, unless Virginia submits to the Secretary by that date copies of a revised policy statement or otherwise amends its program to make its coal haul roads policy consistent with the Federal requirements. This policy must be accompanied by a legal opinion which states that it is enforceable under existing State law and regulations.

* * * * *

[FR Doc. 82–2832 Filed 2–2–82; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–2–FRL–2020–5]

Approval and Promulgation of Implementation Plans; New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces receipt from the State of New Jersey of a proposed revision to its State Implementation Plan (SIP). The proposed revision provides two new regulatory approaches to the control of sulfur dioxide emissions from fuel oil combustion sources: non-coal burning sources would be allowed to "bubble" their sulfur dioxide emissions; and sources voluntarily converting to coal combustion would be allowed to use, in the period prior to conversion, oil with a higher sulfur content than currently permitted.

A public hearing on this proposal was held by the State on January 20, 1982. The State hearing record closed on January 22, 1982. Concurrently, EPA is proposing to approve New Jersey's request contingent upon final adoption by the State of its proposal in a substantially unchanged form. This concurrent review, which EPA refers to as "parallel processing," is designed to expedite EPA action on SIP revisions.

DATES: Comments must be received on or before March 5, 1982.

ADDRESSES: All comments should be addressed to: Richard T. Dewling, Ph.D., Acting Regional Administrator, Region II Office, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Copies of the proposed SIP revision and comments received are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278;

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460;

New Jersey Department of Environmental Protection, Bureau of Air Pollution Control, Room 1108, Labor and Industry Building, John Fitch Plaza, CN 027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278 (212) 264–2517.

SUPPLEMENTARY INFORMATION: On October 29, 1981, the Environmental Protection Agency (EPA) received from New Jersey a proposed revision to its State Implementation Plan (SIP). The State's submittal consisted of a revised regulation entitled "Sulfur in Fuel" (Subchapter 9 of Chapter 27, Title 7, New Jersey Administrative Code), a Notice of Public Hearing (published in the December 7, 1981 issue of the *New Jersey Register*) and supporting material.

One provision of the proposed SIP revision would permit sources to average sulfur dioxide (SO_2) emissions from more than one of their stacks in determining compliance with State emission limits. Thus, less costly, higher sulfur content fuel oil could be used in certain boilers if natural gas or other "clean" fuel were used in nearby boilers. The negligible amount of SO_2 emitted from the combustion of the "clean" fuel would offset the increased SO_2 emissions from the use of higher sulfur content oil, and provide for overall lower energy costs.

The other provision of the proposed SIP revision would permit sources to burn higher sulfur content oil for up to two years during which a voluntary conversion is made to burn coal or municipal solid waste. Air quality standards may not be violated during the period when higher sulfur content oil is being burned and stringent emission limitations will apply to the coal or waste burning.

The two new SO_2 control strategies just described are referred to as the "sulfur dioxide bubble" and the "clean conversion incentive," respectively.

The Sulfur Dioxide Bubble

New regulatory provisions have been added to § 9.2, Sulfur Content Standards, to allow a choice of fuel burned at each source as long as the total pounds of SO_2 emitted per million British Thermal Units (BTU) heat generated does not increase. This Section also requires ownership by a single person of all sources comprising the "bubble" and identification of each source involved, including pertinent fuel and source parameters. Air quality modeling, including aerodynamic downwash modeling, is further stipulated unless waived in accordance with § 9.4.

New § 9.4, Waiver of Air Quality Modeling, allows exemption of certain sources from the air quality impact modeling requirements of § 9.2. To be

eligible for exemption, the sources involved must be located in the same vicinity and have identical effective stack heights. If the effective stack heights are not equal, the emissions from burning the higher sulfur content oil must be discharged from the tallest effective stack height. All terms and criteria for the waiver are defined in the regulation by rigorous constraints based on diffusion modeling theory. In addition, to be eligible for a waiver, the total maximum SO_2 emission rate from all sources included in the "bubble" must be no greater than 800 pounds per hour.

The Clean Conversion Incentive

New Section 9.5, Incentive for Conversion to Coal or Municipal Solid Waste, requires sources which convert to coal or municipal solid waste to meet a 0.3 pounds of SO_2 per million BTU emission limitation. As an incentive, for up to two years prior to conversion these sources would be allowed to use oil with a higher sulfur content than currently permitted. However, the applicant must demonstrate by air quality modeling that this interim use of higher sulfur content fuel oil will not cause a violation of national ambient air quality standards for any pollutant or a significant air quality impact.

Based on its review of the State submittal, EPA is proposing to approve the State's SIP revision request. However, since both the proposed "bubble" and clean conversion incentive provisions require air quality impact modeling and involve such undefined factors as source location, stack height, distance between stacks, and local topography, EPA must treat any application under these Sections on a case-by-case basis, as a SIP revision. The New Jersey Department of Environmental Protection (NJDEP) understands and agrees with this concept.

This will not be the case when air quality modeling requirements for "bubbles" are waived under the provisions of Section 9.4, Waiver of Air Quality Modelling; EPA approval as a SIP revision will not be required. As explained earlier in the discussion describing this new Section, the constraints are so tightly drawn, and thus so mechanical and predictable in operation, that "bubbles" developed under them could not interfere with attainment and maintenance of standards. In essence it has been predetermined that application of the regulation's provisions will ensure that there will be no net impact on air quality from application of the "bubble."

Since "bubble" applications granted modeling waivers will not be reviewed as SIP revisions, it is important that New Jersey provide adequate opportunity for public notice and comment on them. The NJDEP has submitted to EPA acceptable public participation procedures which will be used for all "bubble" applications. These provide for the publication in local and regional newspapers of an appropriate notice, making documents available for public inspection at local NJDEP offices, and a 45-day public comment period. A State public hearing will be held, at the discretion of the NJDEP, if a proposed approval generates significant comment. Public comments will be reviewed and taken into consideration by the Department in deciding on the approval and the conditions on approval of an application.

EPA's review of the material submitted indicates that this revision to the New Jersey SIP will be approvable if it is not substantially changed from its presently proposed form. In the interest of expediting federal review, EPA is proposing approval of this SIP revision now, before final submittal of the revision to EPA by the State. EPA refers to this new procedure as "parallel processing." If the revision currently proposed by the State is substantially altered as a result of the State public review process, EPA will evaluate the approvability of the altered proposal and publish a revised notice of proposed rulemaking in the **Federal Register.** Alternatively, if it is determined based on public comment that substantial revision is not required, EPA will take final rulemaking action on today's proposal after it is adopted by the State.

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted on or before March 5, 1982 concerning whether the proposed SIP revision should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed SIP revision will be based on whether it meets the requirements of Section 110 of the Clean Air Act and EPA regulations at 40 CFR Part 51.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under Section 110 of the Clean Air Act will not have a significant impact on a substantial number of small entities (46 FR 8709; January 27, 1981). The proposed rule, if promulgated, constitutes a SIP approval under Section 110 within the terms of the January 27 certification. This action imposes no new requirements. It provides for greater flexibility and the use of more cost-effective measures in meeting existing state requirements.

The Office of Management and Budget (OMB) has exempted this proposed SIP revision from the OMB review requirements of Executive Order 12291.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C 7410 and 7601))

Dated: December 22, 1981.

Richard T. Dewling,

Acting Regional Administrator, Environmental Protection Agency.

[FR Doc. 82-2769 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL 2017-8]

Approval and Promulgation of Nonattainment Plans for Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes rulemaking and solicits public comment on rules for the issuance of permits to new or modified air pollution sources affecting nonattainment areas in Illinois. These regulations were submitted by the State of Illinois to satisfy Part D of the Clean Air Act. They are intended to accommodate emissions growth in nonattainment areas through the use of offsets and the provision of a limited growth margin.

DATE: Comments on this revision and on the proposed EPA action are due on or before March 5, 1982.

ADDRESSES: Submit Comments to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illionis 60604.

Copies of the SIP revisions, EPA's evaluation and public comments received are available for inspection at the following addresses: U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

In addition, copies of the SIP revisions are available for inspection at the following addresses:

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

Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulatory Analysis

Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illionis 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: Part D of the Clean Air Act (Act), as amended in 1977, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as not attaining the National Ambient Air Quality Standards (NAAQS).

The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979, notice were published July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). In order to be approvable, each Part D New Source Review (NSR) SIP must require permits for the construction and operation of new modified major stationary source in nonattainment areas. The permits must be issued in conformance with the statutory requirements of sections 172 and 173 of the Clean Air Act and the regulatory requirements of 40 CFR 51.18.

On April 3, 1979, and June 18, 1980, the State submitted to EPA new NSR rules for adoption in the Illinois State Implementation Plan (SIP). EPA conditionally approved some of these rules on February 21, 1980 (45 FR 11472), and proposed approval of the remaining rules on September 5, 1980 (45 FR 58896).

In April 1980, an environmental group and iron and steel sources filed petitions challenging EPA's conditional approval of the Illinois NSR rules arguing that the Illinois Environmental Protection Agency (IEPA) did not have authority under the Illinois Administrative Procedures Act (IAPA) to adopt such rules. They contended that only the Illinois Pollution Control Board (IPCB) had authority to promulgate rules which establish emission limits for industry.

On May 26, 1981, the Seventh Circuit Court (80–1531) agreed with petitioners and held that the NSR rules were not properly submitted to EPA. This invalidation precluded any final rulemaking on the September 5, 1980, proposal.

Meanwhile, in order to resolve the legal authority question, the State of Illinois adopted Public Act 81–1444 which ordered the IPCB to adopt permit review rules. This Act gave IEPA the authority to make Best Available Control Technology (BACT) and Lowest Available Emission Rate (LAER) determinations and approved the Agency promulgated NSR rules as interim rules effective until the Board adopted a permit program implementing Section 173 of the Act.

On November 20, 1981, the State submitted emergency NSR rules adopted August 26, 1981, by IEPA and draft interim NSR rules under consideration at that time by the IPCB (R81–16) adopting the IEPA NSR rules by reference. On January 17, 1982, the IPCB completed final rulemaking on the interim rule (R81–16). The emergency IEPA rules expire on January 23, 1982, while the interim IPCB rule remains in effect until October 1, 1982, or until the IPCB adopts permanent NSR rules. If the interim IPCB rule is challenged, IEPA plans to file rules identical to the August 26, 1981, emergency rules as permanent agency rules.

EPA proposes to approve these August 26, 1981, emergency NSR rules which have been adopted by the IEPA and adopted by reference as interim rules by the IPCB. Both of these State government entities have been given authority under Public Act 81–1444 to promulgate NSR rules during this period of time.

The NSR rules submitted by the State on November 20, 1981, are similar to the rules discussed in EPA's rulemaking of February 21, 1980 (45 FR 11472) and proposed rulemaking of September 5, 1980 (45 FR 58896) except that they have been modified by the State to meet the requirements of 40 CFR 51.18(j) as amended August 7, 1980 (45 FR 52743). The major changes made by the State reference 40 CFR 51.18(j)(1) (v) and (vi) (definition of major source), as part of the State's regulations.

EPA, as discussed in the Technical Support Document in Docket No. A–157 located at the address below, proposes to approve the NSR rules and changes as meeting the statutory requirements of Sections 172 and 173 of the Act and the requirements of 40 CFR 51.18(j).

Although EPA in its September 5, 1980 proposed rulemaking proposed to disapprove certain sections of the State's NSR rules, subsequent clarification from the State, as discussed in the technical support document, removed any difficulties that EPA had with those sections.

In addition, IEPA has submitted to the IPCB an amendment to the rules which demonstrates IEPA's intention to implement the rules according to the requirements of 40 CFR 51.18(j). The IPCB has already initiated the procedural process for final adoption of this amendment.

All interested parties are invited to comment on these proposed revisions and on EPA's proposed approval. Comments should be submitted to the address listed in the front of this notice. Public comments received on or before March 5, 1982 will be considered in EPA's final rulemaking on the SIP. All comments received will be available for inspection at Region V: Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified on January 27, 1981, that the attached rule will not if promulgated have a significant economic impact on a substantial number of small entities. This action only approves State actions.

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

This proposed rulemaking is issued under the authority of Sections 110, 172 and 173 of the Clean Air Act as amended.

Dated: December 21, 1981.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82–2786 Filed 2–2–82; 8:45 am]

BILLING CODE 6560–38–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6246]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below and proposed changes to base flood elevations for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency,

National Flood Insurance Program, (202) 287–0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 and Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Florida	Belleair Shore (Town), Pinellas County	Gulf of Mexico	Intersection of 1st Street and Gulf Boulevard	*10
			Intersection of 13th Street and Gulf Boulevard	*11
Maps available for inspection at Town Hall, 880 Gulf Blvd., Belleair Shore, Florida.				
Send comments to Honorable Morton H. Raymond, 880 Gulf Blvd., Belleair Shore, Florida 33535.				
Florida	Belle Glade (City) Palm Beach County	Lake Okeechobee	Approximately 1,000 feet west along State Highway 717 from its crossing of Herbert Hoover Dike.	*28
Maps available for inspection at City Hall, 110 SW Avenue E, Belle Glade, Florida.				
Send comments to Honorable Thomas L. Altman, 110 SW Avenue E, Belle Glade, Florida 33430.				
Florida	Boca Raton (City) Palm Beach County	Atlantic Ocean—Open Coast	Approximately 150 feet east from the intersection of Sweetwater Lane and Ocean Boulevard.	*10
			Approximately 300 feet east from the intersection of E. Palm Avenue and Ocean Boulevard.	*10
		Atlantic Ocean—Intracoastal Waterway.	Approximately 1,000 feet east along Jeffery Street from its intersection with NE 7th Avenue.	*8
			Approximately 500 feet east along NE 24th Street from its intersection with U.S. Highway 1.	*8
		Inland Flooding	Intersection of Mohawk Lane and Rosewood Circle	*12
Maps available for inspection at Building Department, 71 N. Federal Highway, Boca Raton, Florida.				
Send comments to the Honorable William A. Konrad, 201 W. Palmetto Park Road, Boca Raton, Florida 33432.				
Florida	Boynton Beach (City) Palm Beach County	Atlantic Ocean—Open Coast	Along the shoreline within the corporate limits	*10
		Atlantic Ocean—Lake Worth	Eastern end of Lake Street Intersection of North Road and east Drive.	*9
			Intersection of North Road and East Drive	*8
			Intersection of Shore Drive and Ocean Inlet Drive	*7
Maps available for inspection at Building Department, 200 N. Seacrest, Boynton Beach, Florida.				
Send comments to the Honorable Ed Harmening, P.O. Box 310, Boynton Beach, Florida 33435.				
Florida	Brevard County (Unincorporated Areas)	Atlantic Ocean—Open Coast	Intersection of Flounder and Commercial Roads	*8
			Eastern end of 30th Street	*9
			Approximately 600 feet east of intersection of Pelican Drive and State Highway A1A.	*12
			State Highway A1A over Sebastian Inlet at southernmost county limits.	*13
		Atlantic Ocean—Indian River	Intersection of Florida East Coast Railroad and Huntington Avenue.	*4
			Intersection of Patti Drive and Fay Drive	*4
			Intersection of Bass Drive and South Tropical Trail	*5
			Western end of Woods Lane	*5
			Intersection of Cedar Lane and Riveria Boulevard	*6
			Approximately 500 feet east along Valkaria Road from its intersection with Florida East Coast Railroad.	*8
			Approximately 500 feet west along Long Point Road from its interseciton with State Highway A1A.	*8
			Approximately 200 feet east of intersection of 14th Street and U.S. Highway 1.	*11
		Atlantic Ocean—Banana River	Intersection of Martin Boulevard and North Banana River Drive.	*4
			Intersection of Furman Road and North Banana River Drive.	*5
			Intersection of West Virginia and North Banana River Drive.	*6

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Intersection of West Virginia and North Banana River Drive.	*6
			Southern end of Morris Manor	*7
			Intersection of Red Soil Way and South Patrick Drive	*5
		Atlantic Ocean—Sykes Creek	Eastern end of Smith Road	*5
			Approximately 150 feet west of intersection of Harbor and Tarpon Roads.	*4
		Atlantic Ocean—Sebastian Creek	Western side of U.S. Highway 1 over Sebastian Creek	*10
			Intersection of Main Street and Canal Drive	*7
			Sebastian Creek at southern county limits	*6
Maps available for inspection at Water Management Department, Merritt Island Branch Courthouse, 2575 N. Courtney Parkway, Merritt Island, Florida.				
Send comments to the Honorable Val M. Steele, P.O. Box 1496, Titusville, Florida 32780.				
Florida	Briny Breezes (Town) Palm Beach County	Atlantic Ocean—Open Coast	Approximately 100 feet east of the intersection of Briny Breezes Boulevard and Old Ocean Boulevard.	*10
		Inland Flooding	Approximately 300 feet west along Cordova Avenue from its intersection with Old Ocean Boulevard.	*7
Maps available for inspection at Town Hall, 5000 N. Ocean Boulevard, Boynton Beach, Florida.				
Send comments to the Honorable Hugh David, 5000 N. Ocean Boulevard, Boynton Beach, Florida 33435.				
Florida	Cape Canaveral (City) Brevard County	Atlantic Ocean—Open Coast	Eastern end of Chandler Street (extended)	*8
		Atlantic Ocean—Banana River	Western end of Oak Lane	*4
			Western end of Center Street	*4
Maps available for inspection at Building Department, 105 Polk Avenue, Cape Canaveral, Florida.				
*Send comments to the Honorable Johnson Murphy, Jr., 105 Polk Avenue, Cape Canaveral, Florida 32930.				
Florida	Cocoa Beach (City), Brevard County	Atlantic Ocean—Open Coast	Approximately 400 feet east of intersection of Flagler Lane and Ocean Beach Boulevard.	*9
			Approximately 500 feet east of intersection of Minuteman Causeway and State Highway A1A.	*11
		Atlantic Ocean—Banana River	Angelo Lane	*4
			Intersection of Sarasota Lane and Banana River Boulevard.	*5
			Intersection of River View Lane and South 4th Street	*5
			Intersection of Brevard Avenue and S. 11th Street	*5
Maps available for inspection at Building Department, 57 Brevard, Cocoa Beach, Florida.				
Send comments to the Honorable Dave Brown, P.O. Box 280, Cocoa Beach, Florida 32931.				
Florida	Daytona Beach (City), Volusia County	Atlantic Ocean—Open Coast	Eastern end of Lenox Avenue	*9
			Approximately 500 feet northeast of the intersection of University Boulevard and North Atlantic Boulevard.	*11
		Atlantic Ocean—Halifax River/Intracoastal Waterway.	Intersection of Mason Avenue and Root Street	*6
			Approximately 400 feet northeast along Lexington Drive from its intersection with Ballough Road.	*7
			Intersection of South Beach Street and Shady Place	*7
			Northern end of Goldfinch	*8
			Western end of auditorium Avenue	*6
Maps available for inspection at Engineering Office, Caroline & Bellevue, Daytona Beach, Florida.				
Send comments to the Honorable Lawrence J. Kelly, Box 551, Daytona Beach, Florida 32015.				
Florida	Daytona Beach Shores (City), Volusia County.	Atlantic Ocean—Open Coast	Eastern end of Dotefuhr Avenue	*9
			Approximately 400 feet northeast along Dunlawton Boulevard from its intersection with South Atlantic Avenue.	*11
Maps available for inspection at City Hall, 3050 S. Atlantic Avenue, Daytona Beach Shores, Florida.				
Send comments to the Honorable Ruth Kleiber, P.O. Box 7196, Daytona Beach Shores, Florida 32016.				
Florida	Delray Beach (City), Palm Beach County	Atlantic Ocean—Open Coast	Approximately 100 feet east of the intersection of State Road No. A1A and Sea Spray Avenue.	*10
		Atlantic Ocean—Intracoastal Waterway.	Eastern end of S.E. 4th Street	*8
		Inland Flooding	Western end of Lake Eden Way	*12
			Intersection of Lake Ida Road and Roosevelt Avenue	*12
			Intersection of Lindell Boulevard and Dotterel Drive	*12
Maps available for inspection at City Engineer's Office, 100 NW 1st Avenue, Delray Beach, Florida.				
Send comments to the Honorable Leon M. Weekes, 100 NW 1st Avenue, Delray Beach, Florida 33444.				
Florida	Gulf Stream (Town), Palm Beach County	Atlantic Ocean—Open Coast	Approximately 350 feet east of the intersection of North Ocean Boulevard and Golfview Drive.	*10
Maps available for inspection at Town Hall, 246 Sea Road, Gulf Stream, Florida.				
Send comments to the Honorable William F. Koch, Jr., 246 Sea Road, Gulf Stream, Florida 33444.				
Florida	Highland Beach (Town), Palm Beach County.	Atlantic Ocean—Open Coast	Approximately 300 feet east of the intersection of State Highway A1A and Highland Beach Drive.	*10
Maps available for inspection at Building Department, 3614 South Ocean Boulevard, Highland Beach, Florida.				
Send comments to the Honorable Louis Y. Horton, 3614 S. Ocean Boulevard, Highland Beach, Florida 33431.				
Florida	Indialantic (Town), Brevard County	Atlantic Ocean—Open Coast	Approximately 500 feet east from intersection of Watson Drive and State Highway A1A.	*9

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 250 feet northeast of intersection of Eleventh Avenue and Wave Crest Street.	*12
		Atlantic Ocean—Indian River	Intersection of Second Avenue and Riverside Drive	*6
			Intersection of South Riverside Drive and Orlando Boulevard.	*7
Maps available for inspection at Town Hall, 216 Fifth Avenue, Indialantic, Florida.				
Send comments to the Honorable Andrea Deratany, P.O. Box 3108, Indialantic, Florida.				
Florida	Indian Harbor Beach (City), Brevard County	Atlantic Ocean—Open Coast	Approximately 400 feet east from intersection of State Highway A1A and Banana River Drive.	*11
		Atlantic Ocean—Banana River	Intersection of Desoto Parkway and South Patrick Drive.	*6
			Intersection of Coconut Road and Banana River Drive	*6
			Intersection of Burns Boulevard and Mary Joyce Avenue.	*6
Maps available for inspection at Building Department, 2055 South Patrick Drive, Indian Harbor Beach, Florida.				
Send comments to the Honorable Mary King, 2055 South Patrick Drive, Indian Harbor Beach, Florida 32937.				
Florida	Indian River County (Unincorporated Areas).	Atlantic Ocean—Open Coast	Eastern side of State Highway A1A over Sebastian Inlet.	*12
			Approximately 650 feet east along Sandlewood Lane from its intersection with State Highway A1A.	*9
			Approximately 700 feet east along Sandlewood Lane from its intersection with State Highway A1A.	*11
			Eastern end of Sunset Drive	*9
		Atlantic Ocean—Indian River	Approximately 50 feet northeast of the intersection of Palm Lane and North Indian River Drive.	*11
			Intersection of Trout Lane and North Indian River Drive.	*9
			Approximately 700 feet east of the intersection of Woodmere Street and Old Dixie Highway.	*8
			Intersection of Jungle Trail and State Highway A1A	*8
			Approximately 100 feet east of intersection of North Tropicana and South Tropicana.	*7
			Intersection of Fleet Road and Indian River Boulevard	*6
			Morningside Drive	*6
			Western end of South Pebble Bay Circle	*5
			Intersection of 3rd Court and Harbor Drive	*6
			Cutlass Cove Drive	*6
			Regatta Drive	*6
		Atlantic Ocean—Sebastian Creek	Western side of U.S. Highway 1 over Sebastian Creek	*10
			Intersection of 142nd Street and 81st Avenue	*7
			Northwestern side of the intersection of Sebastian Bay Street and Josie Street.	*6
Maps available for inspection at County Administrator's Office, 2345 14th Avenue, Vero Beach, Florida.				
Send comments to the Honorable Patrick B. Lyons, 2145 14th Avenue, Vero Beach, Florida 32960.				
Florida	Indian River Shores (Town), Indian River County.	Atlantic Ocean—Open Coast	Approximately 200 feet east of the eastern end of Beachcomer Lane.	*9
		Atlantic Ocean—Indian River	Hole in Wall Island	*7
			Intersection of Johns Island Drive and Indian Harbor Road.	*6
			Intersection of Sabal Palm Lane and Sandpiper Point	*5
Maps available for inspection at Building Department, 6001 North A1A, Indian River Shores, Florida.				
Send comments to the Honorable Edward J. Nolan, Box 8007, Indian River Shores, Florida 32960.				
Florida	Juno Beach (Town), Palm Beach County	Atlantic Ocean—Open Coast	Eastern end of Atlantic Boulevard	*10
		Atlantic Ocean—Pelican Pond	Approximately 100 feet east of the intersection of Olympus Way and Ocean Drive.	*8
Maps available for inspection at Building Department, 841 Ocean Drive, Juno Beach, Florida.				
Send comments to the Honorable Bill Kollmer, 841 Ocean Drive, Juno Beach, Florida 33408.				
Florida	Jupiter (Town), Palm Beach County	Atlantic Ocean—Open Coast	Approximately 250 feet east of the intersection of Ocean Way and State Highway A1A.	*10
		Atlantic Ocean—Lake Worth Creek	Eastern end of Elsa Road	*7
			Clark Lane	*6
		Atlantic Ocean—Loxahatchee River	Intersection of Kennedy Street and Loxahatchee Drive	*6
			Dolphin Circle	*6
			Northern end of Marlin Drive	*7
			Western end of Frazier Drive	*6
Maps available for inspection at Building Department, 210 South Perry Avenue, Jupiter, Florida.				
Send comments to the Honorable Mary Hinton, 210 South Perry Avenue, Jupiter, Florida 33458.				
Florida	Jupiter Inlet Colony (Town), Palm Beach County.	Atlantic Ocean—Open Coast	Approximately 400 feet east of the intersection of Pirates Place and Ocean Drive.	*10
		Atlantic Ocean—Jupiter Sound	Northwest corner of the northernmost end of Lighthouse Drive.	*6

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Atlantic Ocean—Loxahatchee River.	Approximately 200 feet southeast along Colony Road (extended) from its intersection with Lighthouse Drive.	*6
Maps available for inspection at Town Hall, 142 Beacon Lane, Jupiter, Florida.				
Send comments to the Honorable Thomas Warwick, 142 Beacon Lane, Jupiter, Florida 33458.				
Florida	Lake Worth (City), Palm Beach County	Atlantic Ocean—Open Coast	Approximately 700 feet east of the intersection of State Highways A1A and 802.	*10
		Atlantic Ocean—Lake Worth	Intersection of Notre Dame Boulevard and Auburn Drive.	*8
			Intersection of N. 16th Avenue and Amherst Drive	*9
			Intersection of N. Lakeside Drive and N. 13th Avenue	*7
			Intersection of Golfview Street and S. 2nd Avenue	*9
			Intersection of S. 18th Avenue and S. Lakeside Drive	*7
Maps available for inspection at Building and Zoning Office, 7 N. Dixie Highway, Lake Worth, Florida.				
Send comments to the Honorable Dennis Dorsey, 7 N. Dixie Highway, Lake Worth, Florida 33460.				
Florida	Malabar (Town), Brevard County	Atlantic Ocean—Indian River	Florida East Coast Railroad over Goat Creek	*7
			Approximately 200 feet east along Rocky Point Road from its intersection with U.S. Highway 1.	*8
Maps available for inspection at Town Hall, Route 514, Malabar Road, Malabar, Florida.				
Send comments to the Honorable William Radencic, P.O. Box 245, Malabar, Florida 32950.				
Florida	Manalapan (Town), Palm Beach County	Atlantic Ocean—open coast	Ocean Boulevard at northernmost corporate limit	*10
		Atlantic Ocean—Lake Worth	Intersection of Lands End Road and Loggerhead Lane	*7
			Curlew Road	*8
Maps available for inspection at Town Offices, 600 S. Ocean Boulevard, Manalapan, Florida.				
Send comments to the Honorable William Galione, P.O. Box 3466, Lantana, Florida 33462.				
Florida	Melbourne (City), Brevard County	Atlantic Ocean—open coast	Approximately 400 feet east from intersection of State Highway 518 and State Highway A1A.	*9
		Atlantic Ocean—Indian River	Approximately 1,200 feet east of intersection of U.S. Highway 1 and Post Road.	*8
			Eastern end of Masterson Street	*8
			Approximately 250 feet east along West Eau Gallie Boulevard from its intersection with Pineapple Avenue.	*7
			Intersection of South Patrick Drive and State Highway 518.	*6
			Intersection of Melbourne Avenue and Front Street	*7
		Atlantic Ocean—Eau Gallie River	Southern end of Houston Street	*6
		Atlantic Ocean—Crane Creek	Eastern side of the intersection of U.S. Highway 1 and Melbourne Avenue.	*7
Maps available for inspection at Engineering Office, 900 E. Strawbridge Avenue, Melbourne, Florida 32901.				
Send comments to the Honorable Harry Good, 900 E. Strawbridge Avenue, Melbourne, Florida 32901.				
Florida	Melbourne Beach (Town), Brevard County	Atlantic Ocean—open coast	Approximately 400 feet east of intersection of Ocean Avenue and Atlantic Street.	*12
			Approximately 350 feet east of intersection of Cherry Drive and Atlantic Street.	*9
		Atlantic Ocean—Indian River	Intersection of Flamingo Lane and Riverside Drive	*7
			Intersection of Sandy Key and Riverview Lane	*7
Maps available for inspection at Town Hall, 507 Ocean Avenue, Melbourne Beach, Florida.				
Send comments to the Honorable William Mulheron, P.O. Box 113, Melbourne Beach, Florida 32951.				
Florida	New Smyrna Beach (City), Volusia County	Atlantic Ocean—Open Coast/ Ponce de Leon Inlet.	Approximately 600 feet northeast along East 15th Avenue (extended) from its intersection with South Atlantic Avenue.	*11
			Eastern end of Oakwood Avenue	*9
		Atlantic Ocean—Indian River North/Intracoastal Waterway and Turnbull Bay.	Intersection of Cunningham Drive and Inlet Shores Drive.	*7
			Intersection of Spruce Avenue and Art Center Avenue	*7
			Approximately 100 feet east along Rio Del Mar Drive from its intersection with South Riverside Drive.	*8
Maps available for inspection at Building and Planning Department, 210 Sams Avenue, New Smyrna Beach, Florida.				
Send comments to the Honorable George Munson, 210 Sams Avenue, New Smyrna Beach, Florida 32069.				
Florida	North Palm Beach (Village), Palm Beach County.	Atlantic Ocean—Open Coast	Approximately 550 feet east of the point where State Road No. A1A crosses the southern corporate limits.	*10
		Atlantic Ocean—Lake Worth	Eastern end of Wettaw Lane	*7
			Eastern end of Golfview Road	*7
Maps available for inspection at Public Services Department, 645 Prosperity Farms Road, North Palm Beach, Florida.				
Send comments to the Honorable B. A. Marks, 501 U.S. Highway 1, North Palm Beach, Florida 33407.				

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Florida	Ocean Ridge (Town), Palm Beach County	Atlantic Ocean—Open Coast	Approximately 150 feet east along Porter Street from its intersection with Old Ocean Boulevard.	*10
		Atlantic Ocean—Lake Worth	Intersection of Island Drive and Island Drive South	*7
	Maps available for inspection at Town Hall, 6450 N. Ocean Boulevard, Ocean Ridge, Florida.			
	Send comments to the Honorable Arnold H. Sandstrom, 6450 N. Ocean Boulevard, Ocean Ridge, Florida 33435.			
Florida	Ormond Beach (City), Volusia County	Atlantic Ocean—Open Coast	Approximately 500 feet northeast along Amsden Road (extended) from its intersection with Ocean Shore Boulevard.	*11
			Approximately 350 feet northeast along Neptune Avenue (extended) from its intersection with Ocean Shore Boulevard.	*9
		Atlantic Ocean—Halifax River/Intracoastal Waterway and Tomoka River.	Approximately 100 feet east of eastern end of Tiffany Circle.	*4
			Approximately 200 feet east of the intersection of Wilmette Avenue and North Beach Street.	*5
			Eastern side of intersection of Highland Avenue and North Beach Street.	*6
	Maps available for inspection at Department of Planning and Community Development, 22 S. Beach Street, Ormond Beach, Florida.			
	Send comments to the Honorable Charles E. Bailey, P.O. Box 277, Ormond Beach, Florida 32074.			
Florida	Palm Beach (Town), Palm Beach County	Atlantic Ocean—Open Coast	Eastern end of Wells Road	*10
			Eastern end of Via Palma	*10
		Atlantic Ocean—Lake Worth	Intersection of Lake Way and Mediterranean Road	*7
			Intersection of Sunset Avenue and Bradley Place	*7
			Approximately 1,000 feet south along Island Drive from its intersectioin with Island Road.	*8
			Regents Park Road	*7
			Intersection of Ibis Way and State Highway A1A	*7
	Maps available for inspection at Building and Zoning Department, 45 Coconut Row, Palm Beach, Florida.			
	Send comments to the Honorable Mack Ritchie, Box 2029, Palm Beach, Florida 33480.			
Florida	Palm Beach Shores (town), Palm Beach County.	Atlantic Ocean—Open Coast and Lake Worth Inlet.	Approximately 500 feet east of the intersection of Ocean Avenue and Sandal Lane.	*10
			Southern side of the intersection of Atlantic Avenue and Inlet Way.	*7
		Atlantic Ocean—Lake Worth	Intersection of Edwards Lane and Lake Drive	*7
	Maps available for inspection at Clerk's Office, 247 Edwards Lane, Palm Beach Shores, Florida.			
	Send comments to the Honorable Paul Klang, 247 Edwards Lane, Palm Beach Shores, Florida 33404.			
Florida	Ponce Inlet (Town), Volusia County	Atlantic Ocean—Open Coast/Ponce de Leon Inlet.	Approximately 200 feet east of the intersection of Ponce Street and Ocean Avenue.	*9
			Approximately 400 feet east of the intersection of Atlantic Avenue South and Cindy Lane.	*11
		Atlantic Ocean—Halifax River/Intracoastal Waterway.	Intersection of Anchor Drive and Peninsula Drive	*7
			Sailfish Drive	*7
			Approximtely 1000 feet south along Peninsula Drive from its intersection with Pine Street.	*8
	Maps available for inspection at Town Hall, 4680 S. Peninsula Drive, Ponce Inlet, Florida.			
	Send comments to the Honorable Ayres Davies, 4680 S. Peninsula Drive, Ponce Inlet, Florida 32019.			
Florida	Riviera Beach (City), Palm Beach County	Atlantic Ocean—Open Coast	Approximately 500 feet east of the intersection of Ocean and Beach Road.	*10
		Atlantic Ocean—Lake Worth	Intersection of Gulf Stream Way and State Highway A1A.	*7
			Intersection of Sugar Sands Boulevard and Lake Drive	*7
			Intersection of 37th Street and Shore Drive	*8
			Intersection of Old Slip Road and Avenue C	*7
		Inland Flooding	Intersection of 2nd Street and Avenue J	*17
			Intersection of 32nd Street and Avenue P	*17
			Intersection of Z Terrace and 28th Street	*13
	Maps available for inspection at City Hall, 600 W. Blueherron Boulevard, Riviera Beach, Florida.			
	Send comments to the Honorable Bobby E. Brooks, P.O. Drawer 10682, Riviera Beach, Florida 33404.			
Florida	Satellite Beach (City), Brevard County	Atlantic Ocean—Open Coast	Approximately 400 feet east of intersection of State Highway A1A and Jackson Avenue.	*11
			Approximately 350 feet east of intersection of State Highway A1A and Jackson Avenue.	*9
			Eastern end of Sunrise Avenue	*9
		Atlantic Ocean—Banana River	Intersection of South Patrick Drive and Roosevelt Avenue.	*6
			Intersection of Desoto Parkway and Kale Street	*6
	Maps available for inspection at Building & Zoning Department, 510 Cinnamon Drive, Satellite Beach, Florida.			
	Send comments to the Honorable Patrick J. Utecht, 510 Cinnamon Drive, Satellite Beach, Florida 32937.			

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Florida	South Palm Beach (Town), Palm Beach County.	Atlantic Ocean—Open Coast	From the shoreline inland for approximately 50 feet, entire length of the community.	*10
		Atlantic Ocean—Lake Worth	Ocean Boulevard	*7
Maps available for inspection at Town Clerk's Office, 3577 S. Ocean Boulevard, South Palm Beach, Florida.				
Send comments to the Honorable Donald S. Spigler, 3577 S. Ocean Boulevard, South Palm Beach, Florida 33480.				
Florida	Tequesta (Village), Palm Beach County	Atlantic Ocean—Open Coast	From the shoreline inland for approximately 20 feet, entire length of community.	*10
		Atlantic Ocean—Jupiter Sound	Intersection of State Route A1A and an unnamed road in the northeastern portion of the community.	*6
		Atlantic Ocean—Loxahatchee River and North Fork Loxahatchee River.	Western end of River Drive	*6
			Approximately 400 feet east along Tequesta Drive from its intersection with Point Drive.	*7
Maps available for inspection at Building Department, 357 Tequesta Drive, Tequesta, Florida.				
Send comments to the Honorable W. Harvey Mapes, Jr., P.O. Box 3273, Tequesta, Florida 33458.				
Florida	Vero Beach (City), Indian River County	Atlantic Ocean—Open Coast	Eastern end of Hibiscus Lane	*9
		Atlantic Ocean—Indian River	Intersection of Greytwig Road and Indian River Drive	*5
			Intersection of 5th Avenue and Royal Palm Boulevard	*5
			Intersection of Lantana Lane and Avenue K	*6
Maps available for inspection at Planning Department, 1036 20th Street, 2nd Floor, Vero Beach, Florida.				
Send comments to the Honorable Terry Goff, P.O. Box 1389, Vero Beach, Florida 32961.				
Florida Volusia County (Unincorporated Areas).		Atlantic Ocean—Open Coast	Approximately 150 feet east of intersection of Sea Bridge Drive and State Highway A1A.	*9
			Approximately 500 feet east of intersection of Allard Street and South Atlantic Avenue.	*11
			Approximately 500 feet northeast of intersection of 17th Street and Central Avenue.	*11
		Atlantic Ocean—Halifax Creek/Intracoastal Waterway.	Approximately 200 feet west of intersection of Dolphin Avenue and John Anderson Drive.	*4
			Approximately 3,000 feet west along Highbridge Road from its intersection with John Anderson Drive.	*5
		Atlantic Ocean—Halifax River/Intracoastal Waterway.	Approximately 100 feet west of intersection of Capistrano Drive and John Anderson Drive.	*4
			Intersection of Egret Street and Peninsula Drive	*7
			Intersection of Ridgewood Avenue and Katherine Street.	*9
			Sleepy Hollow Drive	*7
		Atlantic Ocean—Indian River North/Intracoastal Waterway.	Pelican Drive	*7
			Intersection of Watts Drive and South Atlantic Avenue	*7
			Approximately 1,000 feet southwest of intersection of 17th Street and Central Avenue.	*8
			Eastern end of Myrtle Avenue	*6
		Atlantic Ocean—Mosquito Lagoon/Intracoastal Waterway.	Intersection of Canal Avenue and River Drive	*6
			Approximately 1,000 feet southeast along dirt road extending from the intersection of Canal Avenue and River Drive, at Oak Hill Dock.	*7
		Atlantic Ocean—Indian River	Approximately 1,000 feet east of intersection of County Line Road and U.S. Highway 1.	*4
			Approximately 1,000 feet east of intersection of Florida East Coast Railroad and the southern county limits.	*5
Maps available for inspection at Public Works Department, 136 N. Florida Avenue, DeLand, Florida.				
Send comments to the Honorable Clyde Mann, P.O. Box 429, DeLand, Florida 32720.				
Indiana	(T) Mooresville, Morgan County	White Lick Creek	At downstream extraterritorial limits	*660
			Just upstream of State Highway 67	*667
			Just upstream of Greencastle Road	*671
			Just downstream of County Line Road	*678
		East fork White Lick Creek	At mouth	*661
			Just upstream of High Street	*666
			Just upstream of Bridge Street	*670
			At upstream county boundary	*679
Maps available for inspection at the Town Hall, 26 South Indiana, Mooresville, Indiana.				
Send comments to Honorable Stephen Edwards, Town Board President, Town of Mooresville, Town Hall, 26 South Indiana, Mooresville, Indiana 46158.				
New Jersey	Little Silver Borough, Monmouth County	Parker Creek	Shoreline from southern corporate limits to 80 feet south of extended Breezy Point.	*9
			Shoreline from 80 feet south of extended Breezy Point to confluence with Shrewsbury River.	*10
		Shrewsbury River	Entire shoreline within community	*12
		Little Silver Creek	Shoreline from confluence with Shrewsbury River to 175 feet north of extended Borden Place.	*12
			Shoreline from 175 feet north of extended Borden Place to 240 feet south of extended Borden Place.	*10
			Shoreline from 240 feet south of extended Borden Place to upstream side of Willow Drive.	*9
		Little Silver tributary 2	Shoreline from confluence with Little Silver Creek to upstream side of Seven Bridges Road.	*9
		Town Neck Creek	Shoreline from confluence with Shrewsbury River to 220 feet south of extended Battle Row.	*11

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Shoreline from 220 feet south of extended Battle Row to the end of Town Neck Creek.	*9
		Little Silver tributary 1	Shoreline from confluence with Little Silver Creek to upstream side of Prospect Avenue.	*9

Maps available for inspection at the Municipal Building, 480 Prospect Avenue, Little Silver, New Jersey.

Send comments to Honorable John A. Marrah, Mayor of Little Silver, Municipal Building, 480 Prospect Avenue, Little Silver, New Jersey 07739.

New Jersey	Rumson Borough, Monmouth County	Navesink River	Eastern corporate limits to upstream side of Oceanic Bridge.	*12
			Upstream side of Oceanic Bridge to western corporate limits.	*11
		Shrewsbury River	Confluence with Navesink River to Holly Tree Lane extended.	*11
			Holly Tree Lane extended to Rumson Road extended	*9
			Rumson Road extended to approximately 1,100 feet north of Two Rivers Road extended.	*10
			Approximately 1,100 feet north of Two Rivers Road extended to approximately 750' upstream of Two Rivers Road extended.	*11
			Approximately 750 feet upstream Two Rivers Road extended to approximately 1,125 feet west of Clubway extended.	*12
			Approximately 1,125 feet west of Clubway extended to approximately 300 feet east of Wardell Avenue extended.	*10
			Approximately 300 feet east of Wardell Avenue extended to western corporate limits.	*9

Maps available for inspection at the Municipal Building, East River Road, Rumson, New Jersey.

Send comments to Honorable Charles F. Paterno, Mayor of Rumson, Municipal Building, East River Road, Rumson, New Jersey 07760.

New Jersey	Stockton Borough, Hunterdon County	Delaware River	Downstream corporate limits	*78
			Bridge Street (upstream side)	*83
			Upstream corporate limits	*84
		Brookville Creek	Confluence with Delaware and Raritan Canal	*78
			Upstream of dam approximately 520' upstream of State Route 29.	*91
			Upstream corporate limits	*143
		Wickecheoke Creek	Confluence with Delaware and Raritan Canal	*84
			State Route 29 (upstream side)	*84
			Upstream corporate limits	*88

Maps available for inspection at the Municipal Building, Main Street, Stockton, New Jersey.

Send comments to Honorable Anthony J. Suozzo, Mayor of Stockton, Municipal Building, Main Street, Stockton, New Jersey 08559.

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

Issued: January 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-2606 Filed 2-2-82; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 47, No. 23
Wednesday, February 3, 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

Office to the Secretary

Privacy Act of 1974; Amendment of Existing System of Records

AGENCY: Department of Agriculture.

ACTION: Notice of amendment to existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act System of Records: USDA/FS–47, Forest Service Placement Availability System, last published in the **Federal Register** December 4, 1979, at 44 FR 69694.

EFFECTIVE DATE: March 1, 1982.

FOR FURTHER INFORMATION CONTACT: Eddie L. Wade, FOIA/PA Officer, Forest Service, USDA (IS), P.O. Box 2417, Washington, D.C. 20013, Telephone: 202/447–6101.

SUPPLEMENTARY INFORMATION: The System location will be modified to include National Forest headquarters as storage locations. Categories of individuals covered by the System will be amended to include non-temporary Forest Service employees in all General Schedule series grades GS–1 through GS–15 and all General Merit series grades GM–13 through GM–15, who are presently covered by the Forest Service Merit Promotion Plan and located in organizational units that have a Placement Availability System. Categories of records in the System will be modified to include information on availability for promotion.

Record source categories will be amended to include the unit supervisor as an information source.

John R. Block,
Secretary.
January 29, 1982.

USDA/FS–47

SYSTEM NAME:

Forest Service Placement Availability System, USDA/FS.

SYSTEM LOCATION:

The records in this system are maintained at the Forest Service headquarters in Washington, D.C., Regional Offices, Forest Supervisors' Offices, the Fort Collins Computer Center (FCCC) in Fort Collins, Colorado, and Research Experiment Stations located throughout the country. The address for the headquarters is Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue SW., Washington, D.C. 20013. The address of all other Forest Service offices may be found in 36 CFR 200.2, Subpart A, or in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-temporary Forest Service employees in all General Schedule series grades GS–1 through GS–15 and all General Merit series grades GM–13 through GM–15, who are presently covered by the Forest Service Merit Promotion Plan and located in organizational units that have a Placement Availability System.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes information on the above employees' availability for lateral reassignment—geographic availability, duration of current assignment, functional specialties for which available, reasons for desired move, restrictions, employee's name, social security number, current job category, past work experience codes, and supervisor's comments. It also provides each employee with an opportunity to indicate availability for short-term project assignments away from the regular work site and availability to be nominated by management for competitive promotional opportunities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 335.102.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored at FCCC in magnetic tape, disk or other formats, as well as on input forms prepared by covered employees which may be stored manually in file folders.

RETRIEVABILITY:

Records are indexed by employees' last name, social security number, organizational unit, category of availability, and category of organizational interest.

SAFEGUARDS:

Records are kept in either locked filing cabinets or in computer files which are accessible only by special code.

RETENTION AND DISPOSAL:

Records will be maintained on individuals in the Forest Service or organizational units which elect to have a Placement Availability System. Records may be maintained on employees who have voluntary applications or file for lateral reassignment to organizational units which elect a Placement Availability System. Records will be destroyed on individuals who leave organizational units which have a Placement Availability System.

SYSTEM MANAGER AND ADDRESS:

Director of Personnel Management, Forest Service, U.S. Department of Agriculture, Room 910 RP–E, P.O. Box 2417, Washington, D.C. 20013, or the appropriate Regional Personnel Officer or the appropriate Research Station Assistant Director for Administrative Support Services.

NOTIFICATION PROCEDURE:

Any employee may request information regarding the system of records, or information as to whether the system contains records pertaining to him or her from the system manager. A request for information should contain the individual's name and social security number and organizational unit.

RECORD ACCESS PROCEDURES:

Use same procedures as for requesting notification.

CONTESTING RECORD PROCEDURES:

Individual records may be amended or updated at any time, as the individual employee desires. Any part of an employee's record may be contested by that individual. The servicing personnel office will provide procedural advice.

RECORD SOURCE CATEGORIES:

The information in the records is furnished by the individual employee, the employee's immediate supervisor and/or unit supervisor.

[FR Doc. 82-2852 Filed 2-2-82; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Order 82-1-129]

Application of Cape Smythe Air Service for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (82-1-129).

SUMMARY: The Board is proposing to award a certificate of public convenience and necessity to Cape Smythe Air Service, Inc., authorizing it to engage in the interstate and overseas air transportation of persons, and the interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions, except in all-cargo service within Alaska or Hawaii; and all-cargo air transportation in Alaska between and among the points listed in its application. The Board is also tentatively determining that Cape Smythe is fit, willing, and able to provide service.

DATES: Objections: All interested persons having objections to the Board's issuing the proposed certificate or to its tentative finding of fitness shall file, and serve upon all persons listed below no later than February 23, 1982, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 40194, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Cape Smythe Air Service; Hank Myers; the mayor and airport manager of each city to which the pleading refers; and the Alaska Transportation Commission.

FOR FURTHER INFORMATION CONTACT: James Ransom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5197.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-1-129 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-1-129 to that address.

By the Civil Aeronautics Board, January 29, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-2816 Filed 2-2-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-1-131]

Application of Channel Flying, Inc. for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (82-1-131.)

SUMMARY: The Board is proposing to award a certificate of public convenience and necessity to Channel Flying, Inc. authorizing it to engage in the interstate and overseas air transportation of persons, and the interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions, except that its authority to conduct all-cargo operations within Alaska or Hawaii shall be limited to the points listed in its application. The Board is also tentatively deciding that Channel is fit, willing, and able to provide service.

DATES: Objections: All interested persons havng objections to the Board's issuing the proposed certificate or to its tentative finding of fitness shall file, and serve upon all persons listed below no later than February 24, 1982, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 40200, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20424.

In addition, copies of such filings should be served on Channel Flying, Inc.; the mayor and airport manager of each city to which the pleading refers; and the Alaska Transportation Commission.

FOR FURTHER INFORMATION CONTACT: Charles Stohr, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5000.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-1-131 is available from our Distribution Section, Room 100, 1825 Connecticut Ave., NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-1-131 to that address.

By the Civil Aeronautics Board, January 29, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-2817 Filed 2-2-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-1-130]

Application of Hermens for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (82-1-130).

SUMMARY: The Board is proposing to grant a certificate of public convenience and necessity to Hermens Air, Inc. authorizing (1) the interstate and overseas air transportation of persons, (2) of property and mail between all points in the United States, its territories and possessions, except that its all-cargo authority within Alaska or Hawaii shall be limited to transportation between Alakanuk, Emmonak, Kotlik, Mountain Village, Pilot Station, St. Mary's, and Sheldon's Point, Alaska; the Board also tentatively finds Hermens fit, willing and able to provide this service.

DATES: Objections: All interested persons having objections to the Board issuing the proposed certificate or to its tentative finding of fitness shall file, and serve upon all persons listed below no later than February 23, 1982, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 40193, and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies should be served upon the persons listed in Appendix B of Order 82–1–130.

FOR FURTHER INFORMATION CONTACT: Gerard N. Boller, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5330.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–1–130 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 82–1–130 to that address.

By the Civil Aeronautics Board, January 29, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–2818 Filed 2–2–82; 8:45 am]

BILLING CODE 6320–01–M

[Order 82–1–132]

Application of Tyee Airlines for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (82–1–132).

SUMMARY: The Board is proposing to award a certificate of public convenience and necessity to Tyee Airlines authorizing it to engage in the interstate and overseas air transportation of persons, and the interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions, except that its all-cargo service within Alaska or Hawaii shall be limited to transportation between and among the points listed in its application. The Board is also tentatively determining that Tyee is fit, willing, and able to provide this service.

DATES: Objections: All interested persons having objections to the Board issuing the proposed certificate or to its tentative finding of fitness shall file, and serve upon all persons listed below no later than February 24, 1982, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 40184, and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Tyee Airlines; the mayor and airport manager of each city to which the pleading refers; and the Alaska Transportation Commission.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Kramp, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5459.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–1–132 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82–1–132 to that address.

By the Civil Aeronautics Board, January 29, 1982.

Phillis T. Kaylor,

Secretary.

[FR Doc. 82–2819 Filed 2–2–82; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 40310]

Best Airlines Fitness Investigation; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to Judge Kane.

Dated at Washington, D.C., January 28, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82–2815 Filed 2–2–82; 8:45 am]

BILLING CODE 6320–01–M

COMMISSION ON CIVIL RIGHTS

District of Columbia Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 4:00 p.m., and will end at 6:00 p.m., on February 18, 1982, at the Mid-Atlantic Regional Office, Gelman Building, 2120 L Street, NW., on the Lower Level, Washington, D.C. 20037. The purpose of this meeting is to discuss program planning and to receive reports of subcommittee activity on police/community relations and employment issues.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Walter E. Washington, 408 T Street, NW., Washington, D.C. 20001, (202) 387–4613 or the Mid-Atlantic Regional Office, 2120 L Street, NW., Room 510, Washington, D.C. 20037, (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 29, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–2820 Filed 2–2–82; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Float Glass From Italy; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On April 21, 1981, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the countervailing duty order on float glass from Italy. The time periods covered by this review differ for the two known exporters covered by the order. The period of review for Fabbrica Pisana, S.p.A. is January 7, 1976 through December 31, 1979. The period of review for Societa Italiana Vetro, S.p.A. ("SIV") is March 30, 1979 through December 31, 1979.

Interested parties were invited to comment on the preliminary results. The petitioner requested a disclosure of pertient information under an administrative protective order. The Department determined that the material should be released, but the Italian government would not allow release of the confidential materials it had submitted. Therefore, this information was not used in calculating the final countervailing duty rates and we relied, instead, on the best information otherwise available. SIV submitted new information after the comment period regarding the subsidies it received. This data was submitted too late for consideration in this review by the Department.

The Department determines that the countervailing duty rates for Fabbrica Pisana are 16.94 percent *ad valorem* for January 7, 1976 through December 31, 1976, 15.85 percent *ad valorem* for calendar year 1977, 15.56 percent *ad valorem* for calendar year 1978, and 15.41 percent *ad valorem* for calendar

year 1979. For SIV, the rate is 15.53 percent *ad valorem* for March 30, 1979 through December 31, 1979. We further determine that cash deposits of estimated countervailing duties at the 1979 rates shall be required on all shipments by these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results.

EFFECTIVE DATE: Feburary 3, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Claire Rickard, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–1487).

SUPPLEMENTARY INFORMATION:

Procedural Background

On January 7, 1976, the Department of the Treasury ("Treasury") published a countervailing duty order, T.D. 76–9, with respect to float glass from Italy (41 FR 1274). Treasury modified the original order on March 8, 1977 (T.D. 77–77, 42 FR 13016) to exclude Societa Italiana Vetro S.p.A. ("SIV"). The petitioner challenged that determination and, on March 29, 1979, the U.S. Customs Court (now the Court of International Trade) held, in *ASG Industries Inc.* v. *United States*, 467 F. Supp. 1200 (Cust. Ct. 1979), that imports of float glass from Italy manufactured or produced by SIV did in fact benefit from the payment of bounties or grants. Liquidation was suspended on March 30, 1979 following the court's decision. The United States appealed the Customs Court decision to the U.S. Court of Customs and Patent Appeals ("CCPA"). On June 18, 1980, the CCPA granted the motion of the United States to dismiss its appeal. As a result, the Department of Commerce ("the Department") published an order on October 24, 1980, amending the countervailing duty order applicable to float glass from Italy to include float glass manufactured or exported by SIV.

On April 21, 1981, the Department published in the **Federal Register** (46 FR 22776) a notice of "Preliminary Results of Administrative Review of Countervailing Duty Order" on float glass from Italy. The Department has now completed that administrative review.

Scope of the Review

The merchandise covered by this review is flat glass manufactured by the float process from Italy. It is currently classifiable under item numbers 543.21 through 543.69 of the Tariff Schedules of the United States. Entries of the float glass which have been substantially further manufactured (e.g., into tempered glass or laminated glass) are not subject to this countervailing duty order.

The review is based upon information for the period January 7, 1976 through December 31, 1979 for Fabbrica Pisana S.p.A. and March 30, 1979 through December 31, 1979 for SIV, the only two known exporters covered by this order. The preliminary review determined that both companies received subsidies in the form of preferential financing, capital grants, reduced contributions to the Italian social welfare system (l'Istituto Nazionale Previdenza Sociale), and a reduced corporate income tax rate.

Issues Raised During the Comment Period

During the comment period the petitioner requested disclosure under an administrative protective order or confidential information used in establishing the countervailing duty rates. We gave the Italian government an opportunity to comment, as provided for by § 355.20(a)(2) of the Commerce Regulations, and then determined that the information was releasable. However, the Italian government refused to allow the release of the confidential data under protective order. As provided by § 355.20(a)(4) of the Commerce Regulations we returned the information submitted after January 1, 1980 which we had used to calculate the preliminary countervailing duty rates. Information from prior years which we had used in our preliminary results was not returned since we had previously used this data as the basis for other decisions. However, we have withdrawn this information from the consideration in this section 751 review. Therefore, the documents which we have used to determine the final countervailing duty rates contain only public information and constitute the best information otherwise available, as provided for in § 355.39(b) of the Commerce Regulations.

After the comment period had ended, SIV presented the Department with additional information regarding this period of review. This information was submitted too late for consideration by the Department.

Analysis of Programs using Best Information Available

Due to the withdrawal of confidential data by the Italian government, the Department has recalculated the subsidies received and the values of production for the two firms using publicly available information. We found that subsidies existed under the same four programs that we identified in the April 21, 1981 notice of preliminary results: Preferential interest rates, capital investment grants, reduced contributions to the social welfare fund (INPS), and reduced income tax payments. We also found one additional subsidy program, a reduction in the General Turnover Tax rate applied on all commercial transactions for factories located in southern Italy. Following is an explanation of the new rates for each program.

(1) *Subsidies.* (a) Preferential Interest Rate Program. Information from the petition filed on May 31, 1974 indicates that loans were given to Fabbrica Pisana and SIV in 1974 at subsidized interest rates 3.5 percent below the prevailing market rate with a fifteen year repayment schedule. Accordingly, we find that the *ad valorem* subsidy benefit for Fabbrica Pisana is 0.99 percent for 1976, 0.47 percent for 1977, 0.32 percent for 1978, and 0.25 percent for 1979; for SIV the benefit in 1979 is 0.33 percent *ad valorem*. After the withdrawal we had no information regarding any other loans.

(b) Capital Investment Grants. The petition states that both Fabbrica Pisana and SIV received investment grants in 1974. It further states that the useful life of the investments purchased with the grants (float glass production lines) is twelve years. Following administrative practice, we have allocated the grants over half the useful life of the assets purchased. For Fabbrica Pisana we found the *ad valorem* subsidy to be 0.88 percent for 1976, 0.42 percent for 1977, 0.31 percent for 1978 and 0.25 percent for 1979. For SIV, the benefit in 1979 is 0.28 percent *ad valorem*.

(c) Reduced Contributions to the Social Welfare Fund. The Italian government may reduce a firm's payments to the Istituto Nazionale Previdenza Sociale (INPS) to encourage development in sourthern Italy. The petition states that the subsidy is equal to 20 percent of the total labor cost which is estimated as 11 percent of the total manufacturing cost. We followed Treasury's precedent which estimated the total manufacturing cost as 50 percent of the value of production. Using this formula, we found the subsidy conferred by this program to be 1.10 percent *ad valorem* for each company for each of the years in our period of review.

(d) Income Tax (IRPEG) Payments. As described in our preliminary results, we consider the benefit given under this program to be 12.5 percent of the taxable income which, lacking actual figures from the companies, we calculate to be 50 percent of the value of

production. However, in this notice of final results we have changed the values of production to reflect the best information available (see below). We now calculate the subsidy under this program to be 13.75 percent *ad valorem* for each company for each year in our period of review.

(e) General Turnover Tax Reduction. The petition claims that a reduction of the General Turnover Tax amounted to a 2 percent subsidy of the cost of each company's total investment. We have calculated those amounts and amortized the benefits over six years, half the useful life of the investments. The *ad valoreum* subsidy rates for Fabbrica Pisana are 0.22 percent for 1976, 0.11 percent for 1977, 0.08 percent for 1978, and 0.06 percent for 1979. For SIV the benefit is 0.07 percent *ad valorem* for 1979.

(2) *Value of Production.* To calculate values of production for 1976, 1977, 1978, and 1979 for Fabbrica Pisana and 1979 for SIV we used the square foot capacity of float glass for each firm (which was given in the petition) multiplied by an average dollar value per square foot. Tis average dollar value we derived from United States Bureau of the Census import statistics for float glass for the appropriate years.

Final Results of the Review

Using the above figures, we determine the aggregate net subsidy conferred by the Government of Italy on the production of float glass by Fabbrica Pisana to be 16.94 percent of the f.o.b. invoice price for the period January 7, 1976 through December 31, 1976, 15.85 percent of the f.o.b. invoice price for calendar year 1977, 15.56 percent of the f.o.b. invoice price for calendar year 1978, and 15.41 percent of the f.o.b. invoice price for calendar year 1979. The subsidy conferred on the production of float glass by SIV is 15.53 percent of the f.o.b. invoice price for the 1979 time period.

The U.S. Customs Service shall assess countervailing duties at the rates stated above on all unliquidated entries of float glass from Italy entered, or withdrawn from warehouse, for consumption on or after January 7, 1976, and exported on or before December 31, 1979 for Fabbrica Pisana and, for SIV, on or after March 30, 1979 and exported on or before December 31, 1979.

As provided by section 751(a)(1) of the Tariff Act of 1930, the Customs Service shall collect a cash deposit of estimated countervailing duties of 15.41 percent of the f.o.b. invoice price for Fabbrica Pisana and 15.53 percent of the f.o.b. invoice price for SIV for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department is now commencing the next administrative review of the order. The amount of countervailing duties to be imposed on shipments exported during the calendar year 1980 will be determined in the next administrative review. Consequently, the suspension of liquidation previously ordered will continue for all entries of this merchandise exported on or after January 1, 1980.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: January 27, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-2728 Filed 2-2-82; 8:45 am]

BILLING CODE 3510-25-M

Fiber Optic Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Telecommunications Equipment Technical Advisory Committee was initially established on October 23, 1973, and rechartered on September 18, 1981, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 5, 1981, pursuant to the charter of the Committee.

The Fiber Optic Subcommittee was formed to study fiber optic communication equipment with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: February 9, 1982, at 10:00 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Avenue, NW, Washington, D.C. This meeting is called on short notice because of the need to obtain and consider the Subcommittee's advice on proposals to revise the multilateral COCOM list.

The subcommittee will meet only in executive session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, telphone: 202-377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret Cornejo, Committee Control Officer, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583

Dated: January 27, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82-2701 Filed 2-2-82; 8:45 am]

BILLING CODE 3510-25-M

Certain Steel Wire Nails From the Republic of Korea; Antidumping Preliminary Determination of Sales at Less Than Fair Value and Exclusion From Preliminary Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value and exclusion from preliminary determination.

SUMMARY: We have preliminarily determined that there is a reasonable basis to believe that certain steel wire nails from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value. Therefore, we have directed the U.S. Customs Service to suspend the liquidation of all entries of this merchandise, with the exception of entries of this merchandise produced by Samchok Industrial Company, Ltd. A cash deposit, bond, or other security in an amount equal to the estimated

dumping margin, applicable to each manufacturer investigated, will be required at the time of each entry, or withdrawal from warehouse, for consumption in the United States. Imports from other manufacturers, except Samchok which has been excluded from this determination, will be subjected to security in the amount of 4 percent. We are notifying the United States International Trade Commission of this determination. If the investigation proceeds normally, we will make our final determination not later than April 15, 1982.

EFFECTIVE DATE: February 3, 1982.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Richard Rimlinger, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230 (202–377–1279).

SUPPLEMENTARY INFORMATION: A previous antidumping investigation on certain steel wire nails from Korea was self-initiated on April 4, 1979. The final determination made by the Department of Commerce on May 23, 1980 was that certain steel wire nails from Korea were being sold to the United States at less than fair value (45 FR 34941). On August 13, 1980, the ITC published a determination that sales of this merchandise at less than fair value were not injuring, nor were likely to injure, a U.S. industry (45 FR 53924). This ITC final negative determination ended that earlier antidumping proceeding before the Department of Commerce.

On July 2, 1981, the Department of Commerce published a notice (46 FR 34615) announcing that, on the basis of information developed under the "Trigger Price Mechanism" (TPM) for steel mill products, we were self-initiating a new antidumping investigation to determine whether imports of certain steel wire nails from Korea are being, or are likely to be, sold at least than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the "Act"). The TPM was a monitoring device used by the Department of Commerce to determine those basis steel mill products most likely to be sold at less than fair value in the United States. In accordance with section 731(b) of the Act, we notified the U.S. International Trade Commission (the "ITC") of our action.

On August 17, the ITC found that there is a reasonable indication that imports of certain steel wire nails from Korea are materially injuring, or threatening to materially injure, a U.S. industry. The ITC published its determination in the **Federal Register** on August 26, 1981.

On November 23, 1981, the Department published a notice announcing that this investigation is extraordinarily complicated and that the preliminary determination was being postponed from December 9, 1981, to no later than January 28, 1982 (46 FR 57336).

Scope of Investigation

The types of nails covered by this investigation are nails of one piece construction, which are made of round steel wire and which are either less than 1 inch in length and less than 0.065 inch in diameter, or 1 inch or more in length and 0.065 inch or more in diameter. Such nails are classified under items 646.25 and 646.26 of the Tariff Schedules of the United States. We investigated sales of these nails which were made by fifteen Korean producers and sold for exportation to the United States during the period of investigation, January 1, 1981 through June 30, 1981. The firms investigated were:

1. Ah Ju Steel Co., Ltd. (Ah Ju)
2. Dae-A Wire Steel Co., Ltd. (Dae-A)
3. Gaya Metal Ind., Co., Ltd. (Gaya)
4. Han Duk Ind., Co., Ltd. (Han Duk)
5. Han Kuk Steel Wire Ind., Co., Ltd., (Han Kuk)
6. Je Il Steel Co., Ltd. (Je Il)
7. Jin Heung Iron and Steel Co., Ltd. (Jin Heung)
8. Kabul Ltd. (trading for Dong-A Nails Manufacturing Co., Ltd.)
9. Korea Ill Dong Co., Ltd. (Korea Ill Dong)
10. Korea Nippon Seisen Co., Ltd., (Korea Nippon Seisen)
11. Kuk Dong Metal Ind., Co., Ltd. (Kuk Dong)
12. New Korea Nails Ind., Co., Ltd. (New Korea)
13. Samchok Ind., Co., Ltd. (Samchok)
14. The Tan's Metal Ind., Co., Ltd. (Tan's Co.)
15. Young Sin Metal Ind., Co., Ltd. (Young Sin)

Sales by the above firms accounted for approximately 85 percent of all nail sales to the United States during the period of investigation.

Methodology of Fair Value Comparisons

To calculate fair value, we compared the U.S. price with the foreign market value. In the cases of Dae-A, Jin Heung, Kuh Dong, New Korea and Samchok we compared U.S. price based on purchase price with foreign market value based on home market price. In the case of Korea Nippon Seisen, we compared U.S. price based on purchase price with foreign market value in Japan (as represented by information supplied under the Trigger Price Mechanism). For all other firms investigated, we compared U.S. price based on purchase price with foreign market value based on the constructed value of the imported merchandise.

U.S. Price

All Korean producers sold nails either directly to unrelated U.S. importers or to unrelated trading companies which sold to U.S. importers. Since the price of nails to unrelated United States importers was agreed to before the nails were imported into the United States, we used purchase price as defined in section 772(b) of the Act as the U.S. price for all firms investigated.

We calculated purchase price on the basis of the FOB, C&F, or CIF prices to U.S. importers, or, where appropriate, to the trading companies which resold to U.S. importers. We made deductions for all shipping and port charges.

Foreign Market Value

In the cases of Dae-A, Jim Heung, Kuk Dong, New Korea and Samchok, there were sufficient sales in the home market above the cost of production to allow us to use home market price as defined in section 773(a)(1)(A) of the Act, to determine foreign market value. We calculated home market price on the basis of the delivered or ex-factory prices to unrelated home market customers. Where appropriate, we deducted shipping charges and adjusted for differences between domestic and export nails. We also adjusted for differences between domestic and export packing.

Korea Nippon Seisen, which is located in the Masan Free Trade Zone and is wholly owned by a Japanese firm that also has nail producing facilities in Japan, meets the requirements of section 773(d) of the Act, and is, therefore, subject to the special rule for certain multinational corporations, which states:

> Whenever, in the course of an investigation under this title, the administering authority determines that—
>
> "(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;
>
> "(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and
>
> "(3) the foreign market value of such or similar merchandise produced in one more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the

country of exportation, it shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation."

With respect to the requirements of this section, we attempted to obtain information from a related Japanese nail producer, Nippon Seisen Co., Ltd. (Nippon Seisen), Osaka, Japan, concerning the cost of production and prices of nails sold in the Japanese home market. However, Nippon Seisen did not respond to our request for this information. Section 776(b) of the Act states that whenever any party refuses or is unable to produce information requested the Commerce Department may use the best information otherwise available for determining the existence of less than fair value sales. We have used the relevant trigger prices for steel wire nails as the best available information of the foreign market value for nails produced by Nippon Seisen in Japan. Since these trigger prices are greater than he foreign market value which would otherwise be used for Korea Nippon Seisen, section 773(d) is applicable. Therefore, we compared the purchase price to the foreign market value of Nippon Seisen in Japan, as represented by trigger prices. Furthermore, since Nippon Seisen failed to supply cost data, we made no adjustments to trigger prices to reflect differences in the cost of production between Japan and Korea.

With respect to all remaining firms investigated, we used constructed value, as defined in section 773(e) of the Act, to determine the foreign market value of the nails. None of these companies, with one exception, had adequate sales of such or similar merchandise in the home market or to third countries. The one exception is the Korean producer, Dong-A, which sold nails to the United States using the name of its parent firm Kabul, which is a Korean trading company. Although Dong-A had sales of this merchandise in the home market, there were insufficient sales above the cost of production to use home market sales as the basis of foreign market value.

Therefore, in accordance with section 773(e), we calculated constructed value by adding raw material costs, fabrication costs, general expenses, profit and packing costs. For materials, fabrication and packing costs, we used each firm's actual cost figures. For general expenses, we used each firm's actual cost figures allocated over its respective nail production. In cases in which the actual general expenses were less than the statutory minimum amount of 10 percent of the total cost for materials and fabrication, we used 10 percent for general expenses. We calculated profit on the basis of the statutory minimum of 8 percent of materials, fabrication and general expenses. We used the statutory minimum profit, because data submitted by the Korean producers indicated that the usual profit on sales of this merchandise in the Korean home market was less than the statutory minimum.

In calculating foreign market value, we made currency conversions from Korean won to U.S. dollars using unofficial average monthly rates which were supplies to the Department of Commerce by the Federal Reserve Bank of New York ("FRB"). The FRB is in the process of certifying daily rates for the investigative period and these certified rates will be used for our final determination, in accordance with the provisions of section 522 of the Tariff Act of 1930, as amended (31 U.S.C. 372), provided that they are received in a timely manner. In the interim, the unofficial rates supplied by the FRB will continue to be used as the best available information.

An interest expense adjustment was shown in the sales information supplied by Jin Heung, Kuk Dong Samchok. This interest expense was attributable to the extension of credit on payment terms for either home or U.S. sales transactions. The amount of interest expense has been calculated by prorating the prevailing annual loan rate of interest by the period claimed for the extension of credit. This adjusted rate was then applied to the sales price to approximate the amount of expense which is attributable to the extension of credit on that sale. However, we allow this adjustment only if the respondent can demonstrate that its total actual short-term interest expense is not less than the amount claimed.

For purposes of this preliminary determination, there is insufficient information to make this determination for any firms other than Samchok. We have, therefore, disallowed this adjustment for Jin Heung and Kuk Dong.

Verification

We verified, to the extent possible, all information used in making this preliminary determination. We were granted access to the books and records of the fifteen foreign manufacturers investigated and Kabul, a related company trading for Dong-A. We used standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents containing relevant information.

Preliminary Results of Investigation

We made fair value comparisons on approximately 70 percent of the total sales to the United States made by the fifteen manufacturers under investigation. We found margins on 42 percent of the sales. The margins ranged from 0.01 to 71 percent. The overall weighted-average margin on all sales compared is 4 percent. On a firm-by-firm basis, the results for the purposes of this determination are as follows:

Manufacturers	Percent of sales compared	Percent of comparisons with dumping margins	Percent weighted average margin on all sales compared
Ah-Ju	75.2	56.4	2.2
Dae-A	100	40.3	1.0
Gaya	99.0	97.0	12.3
Han Duk	82.1	29.9	0.5
Han Kuk	39.8	37.5	2.7
Je IL	77.0	12.4	0.6
Jin Heung	100	42.7	2.4
Kabul or Dong-A	52.0	45.1	5.3
Korea III Dong	93.4	62.9	3.0
Korea Seisen Nippon	97.6	100	29.1
Kuk Dong	47.3	74.2	5.9
New Korea	55.4	9.1	0.6
Samchok	97.3	0	0
Tan's Co.	89.4	17.7	0.9
Young Sin	100	94.5	6.7

In the case of Samchok, we found no sales at less than fair value. Samchok is, therefore, excluded from this preliminary determination of sales at less than fair values.

Suspension of Liquidation

In accordance with section 733(d)(1) and (2) of the Act, we are directing the U.S. Customs Service to suspend, upon this notice's publication, the liquidation of all entries of nails, with the exception of those nails produced by Samchok Industrial Company, Ltd., which are entered into the United States, or withdrawn from warehouse, for consumption. As of that date, a cash deposit, bond, or other security must be posted for all entries of nails produced by all firms, except Samchok, in the amount of the weighted-average margin of the FOB price for the listed firms investigated and 4 percent of the FOB price for all other Korean producers.

ITC Notification

We are notifying the U.S. International Trade Commission of this action. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

If requested, we will hold a public hearing to afford interested parties an opportunity to comment orally on this preliminary determination. This hearing is scheduled for 9:30 a.m. on March 4, 1982, U.S. Department of Commerce, Room 3080, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Any request for a hearing must be submitted on or before February 16, 1982, to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the same address above. They should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by February 26, 1982. Oral presentations will be limited to the issues raised in the briefs.

Any written views should be filed in accordance with 19 CFR 353.46 at the above address, in at least ten copies, and on or before March 5, 1982. This determination is published in accordance with § 353.39, Commerce regulations (19 CFR 353.39).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-2790 Filed 2-2-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will meet to discuss status of herring, lobster and groundfish fishery management plans; discuss proposed criteria for review of joint venture permit applications; discuss status of the policy review committee recommendations, as well as discuss other business.

DATES: The public meetings will convene on Wednesday, February 24, 1982, at approximately 10 a.m., and will adjourn on Thursday, February 25, 1982, at approximately 5 p.m. The meetings may be lengthened or shortened, or agenda items rearranged depending upon progress on the agenda. The meetings will take place at the King's Grant Inn, Route 128 at Trask Lane, Danvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, Telephone: (617) 231-0422.

Dated: January 29, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-2812 Filed 2-2-82; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council (Inter-Council/ Advisory Panel); Public Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The South Atlantic and Gulf of Mexico Fishery Management Councils were established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265). These Councils have also established Advisory Panels to assist in carrying out the Councils' functions under the Act. Members of these respective Councils and their Advisory Panels will meet jointly to receive and discuss industry input for solving excessive harvest of small calico scallops as well as related management problems.

DATES: The public meeting will convene on Monday March 1, 1982, at approximately 1:30 p.m., and will adjourn on Tuesday, March 2, 1982, at approximately noon, and will take place at the Holiday Inn, 260 E. Merritt Island Causeway, Merritt Island, Florida.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571-4366.

Dated: January 29, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-2811 Filed 2-2-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Historical Advisory Committee; Meeting

1. In accordance with section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting: Name of Committee: Department of the Army Historical Advisory Committee.

Date: 23 April 1982

Place: Conference Room, 8222-C Casimir Pulaski Building, 20 Massachusetts Ave., NW, Washington, DC

Time: 1000-1140, 1345-1515

Proposed Agenda:

1000-1140—Review of historical activities

1345-1515—Discussion of activities and executive session of the committee

Purpose of meeting: The committee will review the past year's historical activities based on reports and manuscripts received throughout the year and formulate recommendations through the Chief of Military History to the Chief of Staff, US Army and the Secretary of the Army for advancing the purpose of the Army Historical Program.

2. Meetings of the Advisory Committee are open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 23 April 1982 meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to LTC Joseph W. A. Whitehorne, Advisory Committee Management Officer for the Chief of Military History, HQs Department of the Army, Washington DC 20314.

Dated: January 20, 1982.

J. W. A. Whitehorne,

LTC, AGC, Executive Officer.

[FR Doc. 82-2765 Filed 2-2-82; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers; Department of the Army

Intent To Prepare Draft Supplement Environmental Impact Statement, Proposed Wetland Establishment Project at Pointe Mouillee, Monroe County, Michigan

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft supplement to the final environmental impact statement for the confined disposal facility at Pointe Mouillee, Michigan (1974).

SUMMARY: *Proposed Actions.* The purpose of this study, which is being conducted under section 150 of the 1976 Water Resources Development Act, is to determine whether the Corps should add certain features to the Pointe Mouillee project now under construction, in order

to enhance wetland establishment in the area. The Pointe Mouillee project is an offshore diked disposal facility currently in use for confinement of polluted dredged material. The facility was designed and located with the intention of providing an initial step toward reestablishment of the former Point Mouillee marsh and to prevent further erosion damage to the State Game Area. Marsh enhancement measures which would provide water level control for the area landward of the confined disposal facility will be considered in this study. Certain measures have been proposed by the Michigan Department of Natural Resources in order to insure the stability of the marsh and to allow for planting or other maintenance efforts. These are: (1) The rerouting of Lautenschlager Drain, Mouillee Creek, and Bad Creek to control water entering the wetland; (2) isolation or containment of the old Mouillee Creek channel within the marsh to provide a centrally located sump area; and (3) construction of culverts in the middle cross-dike to allow adequate flushing of the marsh.

Alternatives. The measures proposed by the Michigan Department of Natural Resources will be evaluated for their ability to provide establishment of a stable and viable wetland and their ability to meet the requirements of Section 150. During this evaluation, alternative measures or modifications to the proposed measures, may be developed in order to more effectively achieve the project goals.

The "No Action" alternative will also be considered.

Scoping Process.

a. Public Involvement—Coordination with the Michigan Department of Natural Resources will continue throughout this study. All affected Federal, State and local agencies or other interested parties will be contacted during the planning process.

b. Significant issues to be addressed in the Draft Supplement Environmental Impact Statement:

(1) Project impacts on the area's water quality.

(2) Project impacts on recreational use of the area.

c. Other Environmental Review and Consultation Requirements—This project will be reviewed for compliance with the following: The Fish and Wildlife Act of 1956; Fish and Wildlife Coordination Act of 1958; National Historic Preservation Act of 1968; National Environmental Policy Act of 1969; Endangered Species Act of 1973; Water Resources Development Act of 1976; Executive Order 11990, Wetlands Protection, May 1977; Executive Order 11988, Floodplain Management, May 1977; Clean Air Act of 1977; Clean Water Act of 1977; Corps of Engineers, Department of the Army, 33 CFR, Part 230, Environmental Quality; Corps of Engineers, Department of the Army, Policy and Procedure for Implementing NEPA (ER 200–2–2).

Estimated Date of Supplement Environmental Impact Statement Release:

It is anticipated that the Draft Supplement Environmental Impact Statement will be available to the public in July 1982.

ADDRESS: Questions about the proposed action and Supplement Environmental Impact Statement can be answered by Ms. Barbara Schmitt, Environmental Analysis Branch, U.S. Army Corps of Engineers, Box 1027, Detroit, Michigan 48231.

Dated: January 26, 1982.

Robert V. Vermillion,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 82–2766 Filed 2–2–82; 8:45 am]

BILLING CODE 3710–GA–M

Department of the Navy

Feral Burro Management Program; Record of Decision

Pursuant to the provisions of the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (§ 1505.2 of Title 40, Code of Federal Regulations), the Department of the Navy announces its decision to proceed with the removal of all feral burros from the Naval Weapons Center (NWC), China Lake, California.

This decision was reached after careful evaluation of the existing environmental problems associated with the existence of feral burros on the Naval Weapons Center and consideration of all available options for resolving the present safety and resource conflicts, as discussed in the Navy's final EIS. The Navy has determined that total elimination of burros from the NWC is in the best interest of both the short and long term management goals of NWC. After careful consideration of the Navy's final EIS and the associated public comments, the Navy selected complete removal of live trapping, followed by direct reduction (if necessray), as the best plan of action to provide complete removal.

The Navy will allow animal protection groups to conduct live removal of all feral burros from the military reservation. The live removal effort will be operated at the expense of the sponsoring animal protective groups and will necessarily be conducted on a non-interference basis with NWC range schedules. It is the Navy's intention that the live removal process be completed within an 18-month time frame.

Animal protection groups which desire to participate in the live removal program will be required to demonstrate their capacity to effect complete removal and adoption of all burros removed. A Memorandum of Understanding will be negotiated with those groups which qualify concerning specific procedures and other matters involved in the removal and adoption. Should the funds of the sponsoring protection groups be exhausted or should these groups otherwise fail to complete the live removal program in compliance with the mutually-agreed-upon-burro-removal schedule, the Navy will initiate a direct reduction (shooting) program to eliminate any remaining burros.

Given the Navy's basic premise that the NWC's desert ecosystems will benefit substantially by removal of the burro, it follows that the most rapid burro removal process would represent the most environmentally sound alternative. The Navy considers that the direct reduction alternative represents the lease ecologically damaging action in the sense specified in the Council on Environmental Quality (CEQ) guidelines because of the speed in which the ecosystem should be protected. However, due to the intense negative sentiment exhibited by some of the public comments received by the Navy during the NEPA process, the Naval Weapons Center has decided to adopt the method of live capture followed by direct reduction (if necessary). Alternatives considered were: Complete removal by direct reduction; complete removal by live trapping, followed by direct reduction; partial retention of burros on NWC lands; and no action. Other techniques for removal considered during the preliminary stages of the investigation, but rejected as non-viable alternatives were euthanasia, sterilization, carnivorous predator indroduction, disease injection, and fencing the installation.

Once burros have been removed, the presently damaged natural ecosystems will eventually recover. Soils will stabilize and vegetation conditions will improve. The revegetation process will result in gradual restoration of perennial plant communities and associated native wildlife constituents. Naval operations will return to normal, human safety hazards on the airfield and

highways will significantly diminish, and the destruction of archaeological and historic sites will cease.

The only adverse environmental impact expected to result from implementation of the proposed action will occur during the actual removal of the burros. Activities associated with live capture and direct reduction (if necessary) will result in a minimum of habitat damage while authorized personnel are in the field. Naval operations will be disrupted temporarily by live capture activities. Live capture methods will be utilized so as to minimize disruption to the environment to the maximum extent feasible. This will be accomplished in the Memorandum of Understanding with sponsoring animal protection groups which will incorporate actions required to minimize environmental degradation during the removal process. The Naval Weapons Center will also implement management actions to preclude the feral burro from again using the area for permanent habitation. An ongoing evaluation and monitoring system will be used to measure the effectiveness of the implemented burro management plan and to insure mitigating measures are followed.

Dated: January 29, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 82-2822 Filed 2-2-82; 8:45 am]

BILLING CODE 3810-AE-M

Feral Animal Removal Program, San Clemente Island, California; Decision

Pursuant to the provisions of the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (§ 1505.2 of Title 40, Code of Federal Regulations), the Department of the Navy announces is decision to institute a final eradication phase of its feral animal removal program at San Clemente Island, California.

San Clemente Island is administered by the U.S. Navy. Under the terms of the Endangered Species Act of 1973, as amended, the Navy is required to conserve and protect threatened and endangered species and habitats critical to their continued existence. Several such legally designated species occur in a variety of habitats on San Clemente Island. Several other species are considered candidates for such status. The entire island (exclusive of developed areas) comprises actual or potential habitats for one or more of these species. The quality of these habitats and the populations of protected species on the island have been and continue to be severely damaged by the continuing presence of feral animals, particularly goats, on the island. Therefore, the Navy has determined that the preferred environmental alternative is to eliminate the introduced feral animals that actually or potentially endanger these legislatively protected natural resources. This determination is concurred in by the U.S. Fish and Wildlife Service.

The goal of the feral animal removal program is the total elimination of any influence on the ecosystem of San Clemente Island in order that the legislatively mandated preservation of protected species and their habitats may be accomplished. The targets of the program are species that have been domesticated but whose members on San Clemente Island are existing in a "wild state." Animals so identified include pigs, cats, and the predominant species, goats.

During the last 7½ years, the Navy has removed about 16,500 goats through contracts with live trappers and sport hunters. A 1979 court-ordered live trapping program has removed an additional 4,000+ goats with an estimated 100 remaining. The feral pig population has been reduced from an estimated high of 1,000 to the currently estimated 20 pigs. The island's feral cat population is estimated at 600 to 800 animals. It is believed that about 5 deer remain on the island.

The method to be implemented is swift dispatch using firearms or, in the case of feral cats, drug overdose. Only animals that evaded capture during prior live removal efforts will be intentionally terminated. Cruelty to the animals will be obviated by regulation and through the use of professional hunters and trappers and, where appropriate, veterinarian-trained personnel.

Cats will be euthanized by veterinarian-trained personnel using sodium pentobarbitol (a drug used for this purpose in animal shelters). Pigs and mule deer are considered game animals under the California Fish and Game regulations. Deer and pig removal will involve the use of naval or other personnel with hunting licenses for in-season hunts, or removal of the animals under the terms of a Depredation Permit obtained from the California Department of Fish and Game.

Finally, any animal eradication technique will be coordinated, where appropriate, with the U.S. District Court, the State of California, the Animal Damage Control and U.S. Fish and Wildlife Service prior to implementation.

Dated: January 29, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 82-2823 Filed 2-2-82; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Mobil Oil Corp.; Proposed Remedial Order and Opportunity For Objection

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Proposed Remedial Order to Mobil Oil Corporation and Opportunity for Objection.

I. Introduction

Pursuant to 10 CFR 205.192, the Office of Special Counsel (OSC) of the Economic Regulatory Administration (ERA), Department of Energy (DOE) hereby gives notice that a Proposed Remedial Order (PRO) was issued on December 30, 1981 to Mobil Oil Corporation (Mobil), 3225 Gallows Road, Fairfax, Virginia 22037, and that any aggrieved person may file a Notice of Objection to the Proposed Remedial Order in accordance with 10 CFR 205.193 on or before February 18, 1982.

II. The Proposed Remedial Order

Mobil is a refiner engaged in the production of crude oil, in refining and the marketing of petroleum products subject to the DOE regulations. By this PRO, OSC sets forth proposed findings of fact and conclusions of law concerning Mobil's calculation and reporting of non-product cost increases under the refiner price rules in 10 CFR Part 212, Subpart E, between August 1973 and December 1980. Mobil is charged with overstating its non-product costs available for recovery in an amount totalling $430,000,000.

During the audit period §§ 212.81 and 212.83 of the Mandatory Petroleum Price Regulations permitted a refiner to pass through certain non-product costs in sales prices for covered products. These increased non-product costs were required to be calculated pursuant to formulae included in §§ 212.81 and 212.83.

During the period August 1973 through December 1980 Mobil failed to adhere to the regulations in determining its non-product costs associated with six non-product cost categories (Interest, Marketing, Pollution Control, Refinery Fuel, Labor, and Additives).

Specifically, in determining interest, labor and pollution control cost

increases mobil included costs which by definition did not belong in the respective categories. With respect to marketing costs, Mobil improperly determined cost increases on the basis of a comparision of per-unit costs rather than total costs. In determining additive cost increases, Mobil failed to calculate a single average additive cost rate as required by the regulations. Mobil also claimed non-existent refinery fuel costs and therefore overstated its refinery fuel cost increases. Moveover, Mobil, through the subsequent revision of its cost allocation factors, improperly allocated a portion of its increased non-product costs to covered products. Mobil also duplicated expenses in its computations of increased costs in the labor, tax, depreciation and overhead categories. Finally, Mobil revised its May 15, 1973 base costs for some of the non-product cost categories. As a result of the above described actions, Mobil overstated available non-product cost increases and amounts of non-product costs allocated to covered products by approximately $430,000,000.

As a remedy, Mobil is directed to recalculate its marketing, interest, pollution, additive, labor and refinery fuel non-product cost increases, recalculate its non-product costs (except marketing) allocated to covered products, correct its duplication errors and recalculate certain May 1973 base costs. Refunds shall be ordered if these recalculations show that these excessive cost claims resulted in overcharges.

Requests for copies of the Proposed Remedial Order, with confidential information deleted, should be directed to: Freedom of Informatioan Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C. 20585.

III. Notice of Objections

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to the Proposed Remedial Order with the Office of Hearing and Appeals on or before February 18, 1982. A person who fails to file a Notice of Objection shall be determined to have admitted the findings of act and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by § 205.193, the Proposed Remedial Order may be issued as a final order.

All Notices, Statements, Motions, Responses, and other documents required to be filed with the National Office of Hearings and Appeals should be sent to: Office of Hearings and Appeals, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461.

No data or information which is confidential shall be included in any Notice of Objection.

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

Milton Lorenz,

Acting Special Counsel.

[FR Doc. 82–2788 Filed 2–2–82; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–81–024; OFC Case No. 65028–9214–01, 02–12]

New Energy Corporation of Indiana; Acceptance of Petition for Exemptions and Availability of Certification

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of acceptance of petition for exemptions and availability of certification.

SUMMARY: On November 27, 1981, New Energy Corporation of Indiana filed petitions with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a temporary public interest exemption, a permanent emergency purposes exemption, and a permanent scheduled outages exemption for two new major fuel burning installations (MFBI's) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act). FUA prohibits the use of petroleum and natural gas as a primary energy source in certain new MFBI's. Final rules for petitioning for exemptions from the prohibitions of FUA are published in the **Federal Register** at 46 FR 59890 (December 7, 1981).

The MFBI's for which the petitions are filed are two natural gas and oil-fired package boilers (identified as units #2 and #3) to be installed at New Energy Corporation's proposed alternate fuels manufacturing facility to be located at South Bend, Indiana. Units #2 and #3 each have a design heat input rate of 176 million BTU's per hour for oil and 185 million BTU's per hour for natural gas.

ERA has determined that the petition and certifications for the requested exemptions are complete. ERA retains the right to request additional relevant information from New Energy Corporation at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in section 701(c) and (d) of FUA and §§ 501.31 and 501.33 of the Final Rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding are available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E190, Washington, D.C. 20585, Monday through Friday, 8:00 AM–4:00 PM.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the **Federal Register.**

DATES: Written comments are due on or before March 22, 1982. A request for public hearing must also be made within the same 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room 6114, 2000 M Street, NW, Washington, D.C. 20461.

Docket No. ERA–FC–81–024 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William H. Freeman, Case Manager, Office of Fuels Programs, Economic Regulatory Administration, 2000 M Street, NW, Room 6114], Washington, D.C. 20461, Telephone (202) 653–3379

Marilyn Ross, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6G–087, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252–2967

SUPPLEMENTARY INFORMATION: Revised Final Rules were published in the **Federal Register** on December 7, 1981 implementing the provisions of Title II of FUA (46 FR 59890). The Act prohibits the use of natural gas and petroleum as a primary energy source in certain new MFBI's unless an exemption from the prohibition has been granted by ERA.

The New Energy Corporation of Indiana proposes to construct an alternative fuel production facility using a corn-based process to produce ethanol. The production of ethanol using the petitioner's process requires an energy input to the process. The primary fuel source for the energy input required

will be a coal-fired boiler. Although coal will be the ultimate fuel source for the facility, New Energy Corporation considers it to be technologically preferable to wait until the after start-up to order the coal burner. Because of the length of time required to build a coal-fired boiler, the temporary use of oil- and gas-fired boilers for the production facility will minimize the time required for the establishment of full production of ethanol. The oil- and gas-fired boilers are also necessary to ensure safe operation of the plant, to protect against unexpected power outages of the coal-fired facility and to provide the necessary process input steam during the periods required for scheduled equipment maintenance of the coal-fired boilers to ensure continued efficiency and reliable operation.

Section 211(c) of the Act provides for a temporary public interest exemption from the prohibitions of FUA by certification if the petitioner requires use of oil or natural gas in a unit during the construction of an alternative fuel-fired unit. In accordance with § 503.25(b) (1) and (2) of the Final Rule, New Energy Corporation did:

(1) Present to ERA evidence that the unit will be capable of complying with the applicable prohibitions at the end of the proposed exemption period and that the granting of the exemption will be in accord with the purposes of the Act and will be in the public interest; and

(2) Present evidence showing the anticipated duration of the circumstances which constitute the basis for the exemption.

Section 212(e) of the Act provides for a permanent exemption from the prohibitions of FUA for emergency purposes. In accordance with § 503.39 of the Final Rule, New Energy Corporation of Indiana has included in its petition for exemption the following evidence:

(1) A duly executed certification that the petitioner will operate and maintain Unit #2 and Unit #3 for emergency purposes only;

(2) Exhibits containing the basis for the certifications required under paragraph (a) of § 503.39 of the Final Rule; and

(3) Environmental certifications, as required under § 503.13 of the Final Rule.

Section 212(j) of the Act provides for a permanent exemption for installations to meet scheduled equipment outages. In accordance with § 503.43 of the Final Rule, the petitioner did certify that:

(1) Routine maintenance does not permit continued operation of the coal-fired boiler or continued production of ethanol or other activities to be carried on at the site unless ERA grants this exemption;

(2) Unit #2 and Unit #3 will be used only during those periods when the coal-fired boiler is not in operation for reason of scheduled outage; and

(3) The proposed unit is not to exceed an average of 28 days per year over a three-year period and submitted the environmental certification required under § 503.13 of the Final Rule.

ERA hereby accepts the filing of the petition for the exemption as adequate for filing. ERA retains the right to request additional relevant information from New Energy Corporation of Indiana at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. As set forth in § 501.3(b)(4) of the Final Rule, the acceptance of the petitition by ERA does not constitute a determination that New Energy Corporation is entitled to the exemption requested.

Issued in Washington, D.C., on January 26, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 82-2789 Filed 2-2-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: High Energy Physics Advisory Panel

Date and Time: Friday, February 19, 1982, 9:00 a.m.-6:00 p.m. Saturday, February 20, 1982, 9:00 a.m.-4:00 p.m.

Place: Department of Energy, Room A-410, Germantown, Maryland

Contact: Dr. P. K. Williams, Secretary, High Energy Physics Advisory Panel, Department of Energy, Mail Stop J-309, Washington, D.C. 20545, Telephone: 301-353-3367

Purpose of Committee: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative agenda:

—Discussions of the FY 1982 DOE and NSF budgets for High Energy Physics

—Discussion of the FY 1983 Presidential budget requests for DOE and NSF programs in High Energy Physics

—Consideration of transmittal to DOE of the anticipated final Report of the Subpanel on Long Range Planning for the U.S. High Energy Physics Program

—Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at 202-252-5187. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on January 28, 1982.

K. Dean Helms,

Advisory Committee Management Officer.

[FR Doc. 82-2787 Filed 2-2-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 0G2396/T343; PH-FRL-2039-8]

BASF Wyandotte Corp.; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 5-[2-(ethylthio)propyl]-1,3-cyclohexanedione moiety and its several thioxidation products (calculated as the herbicide) in or on the raw agricultural commodities soybeans, meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, sheep, milk, and eggs.

DATE: These temporary tolerances expire May 27, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the Federal Register of September 25, 1981 (46 FR 47294) establishing temporary tolerances for residues of the

herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 5-[2-(ethylthio)propyl]-1,3-cyclohexanedione moiety and its several thioxidation products (calculated as the herbicide) in or on the raw agricultural commodities soybeans at 0.50 parts per million (ppm); meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; milk, and eggs at 0.05 ppm. These temporary tolerances were established in response to pesticide petition (PP 0G2396), submitted by BASF Wyandotte Corp., 100 Cherry Hill Road, Parsippany, NJ 07054.

The company has requested a one-year extension of the temporary tolerances to permit the continued marketing of the remaining raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit (7969-EUP-14), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. BASF Wyandotte Corp must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire May 27, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this temporary tolerance from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: January 22, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-2649 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-32-M

[OPP-00153; PH-FRL-2038-4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a one-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Thursday, March 4, 1982, beginning at 8:30 a.m. and ending prior to 4:00 p.m.

ADDRESS: The meeting will be held at: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: P. H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, Rm. 915, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-0825).

SUPPLEMENTARY INFORMATION: This will be the eleventh meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the December meeting of the full Group.

2. Regional reports.

3. Working Committee reports.

4. Other topics which may have arisen during the March 1-3, 1982, meeting of the Association of American Pesticide Control Officals.

Dated: January 8, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-2350 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-32-M

[A-10-FRL-2041-2]

Issuance of PSD Permit to Lone Star Industries, Inc.

Notice is hereby given that on January 25, 1982, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to Lone Star Industries, Inc. for approval to install a clinker facility at Concrete, Washington.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations, subject to certain conditions specified in the permit.

Under section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following location: EPA, Region 10, 1200 Sixth Avenue, Room 11C, M/S 524, Seattle, Washington 98101.

Dated: January 25, 1982.

John R. Spencer,

Regional Administrator.

[FR Doc. 82-2744 Filed 2-2-82; 8:45 am]

BILLING CODE 6560-38-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Senior Executive Service Performance Awards

The Equal Employment Opportunity Commission hereby gives notice that it has scheduled payment of Senior Executive Service performance awards for February 26, 1982, or as soon thereafter as practicable. For further information contact Beverly A. Gary, Director of Personnel, at 634-7002.

Dated: January 28, 1982.

J. Clay Smith, Jr.,

Acting Chairman.

[FR Doc. 82-2738 Filed 2-2-82; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, by February 15, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreements Nos.: T-4017, T-4018, T-4019, T-4019-1, T-4020, T-4021, T-4022, T-4022-1, T-4022-A and T-4023.

Filing Party: Gerald T. Brawner, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street, 20th Floor, Philadelphia, Pennsylvania 19103.

Summary: Agreement No. T-4017 dated January 21, 1974, between the Philadelphia Port Corporation (Port) and Lavino Shipping Company (Lavino) provides for Lavino's lease of certain premises at Pier 82, South-North Side, to be used for the loading, discharge, transfer and storage of cargo and the embarking and landing of passengers moving in waterborne commerce, together with the exclusive right of docking and berthing oceangoing and other vessels. Compensation to the Port is according to terms mutually agreed to and set forth in the agreement.

Agreement No. T-4018 dated July 10, 1974, between the Port and J. A. McCarthy, Inc. (McCarthy) provides for McCarthy's lease of certain premises at Pier 82, South Side, to be used for the loading, discharge, transfer and storage of cargo and the embarking and landing of passengers in waterborne commerce. Compensation to the Port is according to terms mutually agreed to and set forth in the agreement.

Agreement No. T-4019 dated May 13, 1976, between the Port and McCarthy, trading as Philadelphia Marine Terminal, provides for McCarthy's lease of certain premises on Piers 82 South and 84 South to be used for the loading, discharge, transfer and storage of cargo and the embarking and landing of passengers moving in waterborne commerce together with the exclusive right of docking and berthing oceangoing and other vessels. Compensation to the Port is according to terms mutually agreed to and set forth in the agreement. Agreement No. T-4019 is a consolidation of Agreements Nos. T-4017 and T-4018 and those agreements terminated as of the effective date of T-4019, March 1, 1976.

Agreement No. T-4019-1 dated September 1, 1981, amends the lease Agreement No. T-4019 (dated May 13, 1976) between the Port and McCarthy and assigned to Lavino under Agreement No. T-4023 (dated December 21, 1976). The amendment extends the term of the lease for an additional period of five (5) years through August 31, 1986. Compensation to the Port is according to terms mutually agreed to and as set forth in the agreement. The agreement becomes effective upon Commission approval or its determination that the agreement is not subject to section 15.

Agreement No. T-4020 dated December 6, 1971, between the Port and Luckenbach Steamship Company, Inc. (Luckenbach) provides for Luckenbach's lease of certain premises at Pier 84 South to be used for the loading, discharge, transfer and storage of cargo and the embarking and landing of passengers moving in waterborne commerce. Compensation to the Port is according to terms mutually agreed to and set forth in the agreement.

Agreement No. T-4021 dated October 1, 1975, between the Port and McCarthy provides for McCarthy's lease of certain premises at Pier 84 South to be used for the loading, discharge, transfer and storage of cargo and the embarking and landing of passengers moving waterborne commerce with the exclusive right of docking and berthing oceangoing and other vessels. Compensation to the Port is according to terms mutually agreed to and set forth in the agreement.

Agreement No. T-4022 dated September 21, 1971, between the Port and McCarthy provides for McCarthy's lease of certain premises at Piers Nos. 96, 98 and 100 South Wharves, to be used for the loading, discharge, transfer and storage of cargo and the embarking and landing of passengers moving in waterborne commerce. Compensation to the Port is according to terms mutually agreed to and set forth in the agreement.

Agreement No. T-4022-1 dated September 1, 1981, amends the lease Agreement No. T-4022 (dated September 21, 1971) between the Port and McCarthy and assigned to Lavino under Agreement No. T-4023 (dated December 21, 1976). The purpose of the amendment is to terminate the lease agreement as of September 1, 1981, and Lavino shall vacate Piers 96-98-100 South as soon as practicable. Remaining outstanding obligations between the parties are to be settled according to terms as mutually agreed to and set forth in the agreement. Agreement No. T-4022-1 will become effective upon approval by the Commission or its determination that the agreement is not subject to section 15.

Agreement No. T-4022-A dated October 1, 1980, is a sublease agreement between Lavino and Publicker Industries, Inc. (Publicker) whereby Lavino, a subtenant under lease agreement with the Port made September 24, 1971 (T-4022) of port facilities at Piers Nos. 96, 98 and 100 South, subleases those premises to Publicker. The term of the sublease is from October 1, 1980 to September 30, 1983, with a 4-year renewal option. Compensation to Lavino is according to terms mutually agreed and set forth in the agreement. Publicker shall use the leased premises for the loading, discharge, transfer and storage of cargo and other goods and for the blending of liquids, including, but not limited to, fuels.

Agreement No. T-4023 dated December 21, 1976, between McCarthy and Lavino provides for McCarthy's assignment of all of its rights, title and interest in, to and under certain lease agreements dated May 13, 1976 (T-4019), September 21, 1971 (T-4022) and October 15, 1968 (amended April 24, 1975) between Port and McCarthy leasing premises on Piers 82-84 South, Piers 96-86-100 South and Pier 98 South Annex.

By Order of the Federal Maritime Commission.

Dated: January 29, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-2783 Filed 2-2-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in any activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than February 26, 1982.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical New York Corporation*, New York, New York (trust company activities; Florida): To engage through its *de novo* subsidiary, Chemical Trust Company of Florida, N.A., in the activity of acting as a trust company, including acting as trustee and executor, and offering investment advice to customers. This activity would be conducted from an office in Palm Beach, serving the town of Palm Beach and the surrounding towns of Jupiter, Tequesta, Juno Beach, Riviera Beach, West Palm Beach, Atlantis, Lake Clarke, Lantana, Boynton Beach, Delray Beach, Highland Beach, and Boca Raton.

2. *Citicorp*, New York, New York (finance company activities; Kansas): To expand the activities of an existing office of its subsidiary, Citicorp Acceptance Company, Inc., to include the proposed *de novo* activity of: the making of loans to individuals and businesses to finance the purchase of mobile homes, modular units or related manufactured housing, together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loans. Such activity would be conducted from an office in Overland Park, Kansas serving the entire State of Kansas.

3. *Citicorp*, New York, New York (consumer finance and insurance activities; Ohio, Indiana): To expand the activities and service area of its subsidiary, Citicorp Person-to-Person Mortgage Corporation. The office is engaged in the following previously approved activities: the making, acquiring and servicing of second liens on residential real estate; and the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required. The new activities in which the office proposes to engage *de novo* are: The making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The previously approved service area of the office is comprised of the entire state of Ohio for all previously approved activities. The proposed service area for both previously approved and proposed activities would be expanded to include the entire states of Ohio and Indiana. Credit related life, accident and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Mortgage Corporation. Such activities would be conducted from an office in Springdale, Ohio serving the States of Ohio and Indiana.

4. *Citicorp*, New York, New York (consumer finance and insurance activities; Ohio, Indiana): To expand the activities and service area of its subsidiary, Citicorp Person-to-Person Mortgage Corporation. The office is engaged in the following previously approved activities: the making, acquiring and servicing of second liens on residential real estate; and the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required. The new activities in which the office proposes to engage *de novo* are: The making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The previously approved service area of the office is comprised of the entire state of Ohio for all previously approved activities. The proposed service area for both previously approved and proposed activities would be expanded to include the entire states of Ohio and Indiana. Credit related life, accident and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Mortgage Corporation. Such activities would be conducted from an office in Parma, Ohio serving the States of Ohio and Indiana.

5. *Citicorp*, New York, New York (finance company and insurance activities; Illinois, Iowa, Minnesota and Wisconsin): To expand the activities and service area of an office of its subsidiary, Citicorp Acceptance Company, Inc. (Delaware), engaged in the following previously approved activities: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Acceptance Company,

Inc., to the extent permissible under applicable state insurance laws and regulations; and the servicing, for any person, of loans, and other extensions of credit. The new activity in which the office proposes to engage *de novo* is: The making of loans to individuals and businesses to finance the purchase of mobile homes, modular units or related manufactured housing, together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loans. The proposed service area for all previously approved and proposed activities, with the exception of the sale of credit related property and casualty insurance, shall be comprised of the States of Illinois, Iowa, Minnesota and Wisconsin.

6. *Citicorp,* New York, New York (finance company activities; Texas): To expand the activities of an existing office of its subsidiary, Citicorp Acceptance Company, Inc., to include the proposed *de novo* activity of: the making of loans to individuals and businesses to finance the purchase of mobile homes, modular units or related manufactured housing, together with the real property to which such housing is or will be permanently affixed, such property being used as security for loans. Such activity would be conducted from an office in Lubbock, Texas serving the entire State of Texas.

7. *Citicorp,* New York, New York (finance company activities; Texas): To expand the activities of an existing office of its subsidiary, Citicorp Acceptance Company, Inc., to include the proposed *de novo* activity of making of loans to individuals and businesses to finance the purchase of mobile homes, modular units or related manufactured housing, together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loans. Such activity would be conducted from an office in Irving, Texas, serving the entire State of Texas.

8. *Citicorp,* New York, New York (credit related property and casualty insurance activities; Colorado): To expand the activities of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Aurora, Colorado. The new activity in which the office proposes to engage *de novo* is the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Person-to-Person Financial Center, Inc. to the extent permissible under applicable state insurance laws and regulations. The proposed service area for this activity is the entire State of Colorado.

9. *Citicorp,* New York, New York (financing and insurance activities; Ohio): To expand the service area of an existing office of its subsidiaries, Citicorp Person-to-Person Mortgage Corporation and Citicorp Person-to-Person Financial Center, Inc., located in Columbus, Ohio and engaged in the following activities: The making or acquiring of loans and other extensions of credit; the extension of loans to dealers for financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contacts; the sale of credit related life and accident and health or decreasing or level term life insurance by licensed agents or brokers as acquired; the sale of property and casualty insurance related to extensions of credit; the sale of consumer oriented financial management courses, servicing, for any person, of loans and other extensions of credit. These activities would be conducted from offices in Columbus, Ohio, serving the State of Ohio.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Walter E. Heller & Company, Chicago, Illinois, (factoring and servicing activities; midwest and western U.S.): To engage, through its Real Estate Mortgage Division, in making and servicing mortgage loans for industrial and commercial construction. Some multi-family residential and condominum construction will also be financed, as well as nonconstruction loans. These activities would be conducted from an office in Englewood, Colorado, serving Colorado, Arkansas, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Daktoa, Texas, Utah and Wyoming. Comments on this application must be received not later than February 19, 1982.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Banque Nationale De Paris, Paris, France (commercial financing, leasing, loan servicing and information services activities; Southwestern United States): To engage *de novo* through its subsidiary, BNP Finance (Houston) Corporation, in making or acquiring loans and other extensions of credit, secured or unsecured (other than consumer loans); commercial financing, including revolving credits secured by inventory, accounts receivable or other assets; lease financing and making leases of personal property in accordance with the Board's regulation Y; issuing commercial letters of credit; servicing loans; purchasing loan and lease portfolios from other finance companies and lenders; purchasing and selling loan participations; and providing information and representation services. These activities would conducted frrom an office in Houston, Texas, serving the States of Texas, New Mexico, Oklahoma, Colorado, Arkansas and Louisiana.

D. **Other Federal Reserve Banks:** None.

Board of Governors of the Federal Reserve System, January 28, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2737 Filed 2-2-82; 8:45 am]

BILLING CODE 6210-01-M

Community Bancshares, Inc.; Formation of Bank Holding Company

Community Bancshares, Inc., Dothan, Alabama, 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 Bank of Dothan, Dothan, Alabama. 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 26, 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 27, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2730 Filed 2-2-82; 8:45 am]

BILLING CODE 6210-01-M

Deutsche Bank AG; Proposed Acquisition of Fiat Credit Services, Inc.

Deutsche Bank AG, Frankfurt, Germany, has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and

§ 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(c)), for permission to acquire voting shares of Fiat Credit Services, Inc., Bannockburn, Illinois ("Services").

Applicant states that the wholly-owned subsidiary of Services, Fiat Credit Corporation, Bannockburn, Illinois ("FCC"), would continue to engage in dealer inventory financing for dealers of affiliates of Fiat in the United States; retail financing for purchasers and lessees of products from such dealers; acting as insurance agent or broker for credit life, and credit accident and health and physical damage insurance related to such financing; and data processing and bookkeeping services for Fiat dealers. FCC would expand its activities to engage in the activities of a diversified finance company, such as making secured and unsecured commercial loans, purchasing sales finance contracts, purchasing and selling loan participations, and factoring. FCC would also engage in real and personal property leasing and acting as agent, broker, and adviser in leasing such property; loan servicing for any person; and selling as agent or broker credit-related life, accident and health and physical damage insurance related to such financing. All such activities would be conducted from FCC's offices in Bannockburn and Libertyville, Illinois; Pittsburgh, Pennsylvania; Walnut Creek, California; Dallas, Texas; and Atlanta, Georgia, and the geographic area to be served is the United States. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than February 27, 1982.

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

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2731 Filed 2-2-82; 8:45 am]

BILLING CODE 6210-01-M

First Carrollton Bancshares, Inc.; Formation of Bank Holding Company

First Carrollton Bancshares, Inc., Carrollton, Missouri, 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 50 percent or more of the voting shares of First National Bank of Carrollton, Carrollton, Missouri. 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 26, 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 27, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2732 Filed 2-2-82; 8:45 am]

BILLING CODE 6210-01-M

Lewellen National Corp.; Formation of Bank Holding Company

Lewellen National Corp., Lewellen, Nebraska, 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 First National Bank of Lewellen, Lewellen, Nebraska. 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)).

Lewellen National Corp., Lewellen, Nebraska, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of C–J Insurance Agency, Lewellen, Nebraska.

Applicant states that the proposed subsidiary would engage in general insurance activities in a town with a population of less than 5,000. These activities would be performed from offices of Applicant's subsidiary in Lewellen, Nebraska, and the geographic area to be served is Lewellen, Nebraska. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than February 26, 1982.

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

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2733 Filed 2-2-82; 8:45 am]

BILLING CODE 6210-01-M

Merchants Corp.; Formation of Bank Holding Company

Merchants Corporation, Chicago, Illinois, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 78.2 percent or

more of the voting shares of Merchants & Manufacturers State Bank, Melrose Park, 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 26, 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 27, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2734 Filed 2-2-82; 8:45 am]

BILLING CODE 6210-01-M

Union Bancorp of West Virginia, Inc.; Formation of Bank Holding Company

Union Bancorp of West Virginia, Inc., Clarksburg, West Virginia, 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 Union National Bank of West Virginia, Clarksburg, West Virginia. 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 Richmond. 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 26, 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 27, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2735 Filed 2-2-82; 8:45 am]

BILLING CODE 6210-01-M

Walnut Valley Corp.; Formation of Bank Holding Company

The Walnut Valley Corporation, El Dorado, Kansas, 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 92 percent or more of the voting shares of The Walnut Valley State Bank of El Dorado, Kansas. 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 26, 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 27, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-2736 Filed 2-2-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Handle Placement on Containers to Minimize Biomechanical Stress; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Handle Placement on Containers to Minimize Biomechanical Stress

Date: February 11, 1982.
Time: 1:00 p.m. to 4:00 p.m.
Place: Appalachian Laboratory for Occupational Safety and Health, Safety Annex Conference, Room S-120, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505
Purpose: To discuss the research protocol of a project which is to evaluate the design and placement of handles on common type containers used in manual materials handling tasks.

Additional information may be obtained from: Tim Pizatella, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control, 944 Chestnut Ridge Road, Morgantown, WV 26505 (303) 599-7454.

Dated: January 28, 1982.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 82-2771 Filed 2-2-82; 8:45 am]

BILLING CODE 4110-87-M

Health Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1982

Section 727 of the Public Health Service Act (42 CFR Part 60, previously 45 CFR Part 126) authorizes the Secretary to establish a Federal program of student loan insurance for graduate students in health professions schools. Section 60.13(a)(4) of the program's implementing regulations provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1982, two interest rates are in effect for loans executed through the HEAL Program.

1. For loans made before January 27, 1981, the variable interest rate is 12⅝ percent. Using the regulatory formula (45 CFR 126.13(a)(2)(3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury Bills for the preceding calendar quarter (12.42 percent), and rounding the result (8.92 percent) upward to the nearest ⅛ percent (9.00 percent). Thus, the variable rate for this 3-month period would normally be at the annual rate of 16 percent (9 percent plus 7 percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. For the previous 3 quarters the variable interest at the annual rate was as follows: 13¼ percent for the quarter ending June 30, 1981; 11 percent for the quarter ending September 30, 1981; and 11⅛ percent for the quarter ending December 31, 1981. Therefore, in order to maintain an average annual rate of 12

percent for the 12-month period ending March 31, 1982, the variable interest rate for the quarter ending March 31, 1982, would be at an annual rate of 12⅝ percent.

2. For fixed rate loans executed during the period of January 1 through March 31, 1982, and for variable rate loans executed after January 27, 1981, the interest rate is 16 percent. Using the regulatory formula (42 CFR 60.13(a)(3)), in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury Bills during the preceding quarter (12.42 percent); adding 3.50 percent (15.92 percent); and rounding that figure to the next higher one-eighth of 1 percent (16 percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Professions Educational Assistance Act Insured Loans)

Dated: January 22, 1982.

John H. Kelso,

Acting Administrator.

[FR Doc. 82-2772 Filed 2-2-82; 8:45 am]

BILLING CODE 4110-84-M

Project Grant for General Family Planning Training; Announcement of Availability of Assistance Under the Public Health Service Act

The Health Services Administration (HSA) announces that competitive applications are now being accepted for one general family planning training project grant in Region VIII for Fiscal Year 1982. The project period will be for 3 years (August 1, 1982–July 31, 1985). The grant is authorized by Section 1003(a) of the Public Health Service Act (42 U.S.C. 300a–(a)) which authorizes the Secretary of Health and Human Services to make grants to public or nonprofit private entities to provide training for personnel to carry out family planning service programs described in Section 1001 of the Public Health Service (PHS) Act (42 U.S.C. 300). The amount available under this announcement is $120,875.

The Secretary will make a grant to an eligible applicant to assist in the establishment and operations of a project which will promote the purposes of Section 1003 of the Act, taking into account the degree to which the project meets the requirments of the regulations (see 42 CFR 59.205 and 59.206).

Applications are invited for the following grant:

One general training grant for Department of Health and Human Services (HHS) Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming).

The purpose of the inservice training and continuing professional education is to improve or maintain high-level performance of family planning services grantees in all States of each Region. It addresses the delivery of services and the management of the projects responsible for providing these services.

There is one training grantee in each Health and Human Services Region. The regional training grantees serve as a resource for the inservice, staff development and continuing professional education needs of personnel who are delivering family planning services. These service personnel must have administrative, clinical and counseling expertise to assure the delivery of quality family planning services. Qualified trainers may be staff of the training grantee or consultants hired to teach particular content.

The design of training programs must be consistent with national, regional and State priority areas and reflect a working knowledge of local training needs as well. In determining the skills, attitudes or knowledge to be taught, national priorities should be emphasized. The need for training is determined to the extent possible by evaluation of service grantee performance indicating where training is needed to improve performance, needs assessment, inservice, staff development and continuing education requirements. Each Regional Office has information about the performance of family planning services projects in that Region which is periodically updated and may indicate training needs.

The Secretary will make the grant to an eligible applicant in Region VIII to assist in the establishment and operation of a project which will promote the purposes of Section 1003 of the Act, taking into account:

(1) The extent to which a training program will increase the delivery of services to people, particularly low-income groups, with a high percentage of unmet need for family planning services;

(2) The extent to which the training program promises to fulfill the family planning services delivery needs of the area to be served, which may include, among other things:

(i) Development of capability within family planning service projects to provide pre-service and inservice training to their own staffs;

(ii) Improvement of the family planning services delivery skills of family planning and health services personnel;

(iii) Improvement in the utilization and career development of paraprofessional and paramedical manpower in family planning services;

(iv) Expansion of family planning services, particularly in rural areas, through new or improved approaches to program planning and deployment of resources;

(3) The capacity of the applicant to make rapid and effective use of such assistance;

(4) The administrative and management capability and competence of the applicant;

(5) The competence of the project staff in relation to the services to be provided; and

(6) The degree to which the project plan adequately provides for the requirements set forth in § 59.205.

Application kits, including all necessary forms, instructions, and information relating to the grant application may be obtained upon written request from the Grants Management Branch, Bureau of Community Health Services, 5600 Fishers Lane, Room 7A–08, Rockville, Maryland 20857.

Completed applications must be submitted to the appropriate A–95 Clearinghouse Agency (see Office of Managment and Budget Circular A–95 Revised) at least 60 days prior to the due date for completed applications to be received by the Bureau of Community Health Services.

Completed applications must be submitted to the Grants Management Branch at the above address by April 1, 1982.

Dated: January 27, 1982.

John H. Kelso,

Acting Administrator, Health Services Administration.

[FR Doc. 82-2722 Filed 2-2-82; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

Conference Call Meeting; Subcommittee on Primate Research Centers of the Animal Resources Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the conference call meeting of the Subcommittee on Primate Research Centers, Animal Resources Review Committee, Division of Research Resources, on February 8, 1982, in the Animal Resources Branch Conference Room, Building 31, Room 5B59, National Institutes of Health, Bethesda, Maryland 20205 from approximately 2:30 p.m. until adjournment.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Room 5B55, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5175, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences and Primate Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95, because they fit the description of "programs not considered appropriate" in Section 8(b) (4) and (5) of that Circular.

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2748 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

Conference Call Meeting; Biotechnology Resources Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the conference call meeting of the Biotechnology Resources Review Committee, Division of Research Resources, on February 4, 1982, in Building 31, Room 5B39, National Institutes of Health, Bethesda, Maryland 20205 from approximately 1:00 p.m. until adjournment.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of a PROPHET prospectus. The prospectus and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the prospectus, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Chief, Office of Science and Health Reports, Division of Research Resources, Bldg. 31, Rm. 5B–13, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301 496.5545, will provide summaries of meetings and rosters of committee members.

Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B–41, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301 496–5411, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health).

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate " in section 8(b) (4) and (5) of that circular.

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2750 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

Bladder and Prostatic Cancer Review Committee, Prostatic Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Bladder and Prostatic Cancer Review Committee, (Prostatic Subcommittee), National Cancer Institute, February 22, 1982, Roswell Park Research Study Center, Cary Meeting Room, Roswell Park Memorial Institute, 666 Elm Street, Buffalo, New York 14263. This meeting will be open to the public on Feburary 22 from 8:30 a.m. to 9:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on Feburary 22, from 9:00 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland, 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Andrew Chiarodo, Executive Secretary, Prostatic Subcommittee, National Cancer Institute, Blair Building, Room 7A05, National Institutes of health, Bethesda, Maryland 20205 (301/427–8800) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Numbers 13.393, 13.394, 13.395, project grants in cancer cause and prevention; detection and diagnosis; and cancer treatment research, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of the Circular)

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2751 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

Board of Scientific Counselors, Division of Cancer Treatment; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, February 8–9, 1982, to be held at the M. D. Anderson Hospital facility in Houston, Texas. This meeting will be open to the public on February 8, 1982, from 8:30 a.m. until approximately 3:30 p.m., and again on February 9, 1982, from 8:30 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 8, 1982, from approximately 4:30 p.m. to adjournment, for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of

Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Bruce A. Chabner, Acting Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–52, National Institutes of Health, Bethesda, Maryland 20205 (301–496–4291) will furnish substantive program information.

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2752 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institutes, National Institutes of Health, March 18–19, 1982. The meeting will be held in Conference Room 8 (C Wing), Building 31, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public on March 18–19, from 10:00 a.m. to adjournment, when the Committee will discuss 1982 Initiatives and the Ten Year Plan. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of meetings and rosters of committee members. Dr. William Friedewald, Excutive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20205, phone (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

(NIH programs are not covered by the OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b) (4) and (5) of that Circular)

Dated: January 21, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2753 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Research Support Review Committee, Division of Research Resources, March 18–19, 1982 at the National Institutes of Health. The meeting will be held in Conference Room 9, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public from 9:00 a.m. to approximately 1:30 p.m. on March 18, 1982, to discuss policy matters relating to the Minority Biomedical Support Program. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 18, 1982, from approximately 1:30 p.m. to 5:00 p.m. and on March 19 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications submitted to the Minority Biomedical Support Program. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Insitutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20205, telephone (301) 496–5545, will provide summaries of meeting and rosters of committee members. Dr. Sidney A. McNairy, Executive Secretary of the General Research Support Review Committee, Building 31, Room 5B29, Bethesda, Maryland 20205, telephone (301) 496–6743 will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13,375, Minority Biomedical Support Program, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular)

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2754 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

Genetic Basis of Disease Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Genetic Basis of Disease Review Committee, National Institute of General Medical Sciences on March 19, 1982, at the National Institutes of Health, Building 31C, Conference Room 7, Bethesda, Maryland.

This meeting will be open to the public on March 19, 1982, from 8:30 a.m. until 9:30 a.m. for background information and discussion of issues relevant to the National Institute of General Medical Sciences and its National Research Service Award training activities and research programs. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for approximately five hours for the review, discussion, and evaluation of individual grant applications. It is anticipated that this will occur on March 19 from 9:30 a.m. until adjournment. These applications and the discussions could reveal personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Ellen Casselberry, Public Information Officer, NIGMS, Westwood Building, Room 9A10, Bethesda, Maryland 20205, Telephone 301–496–7301, will furnish summary minutes of the meeting and a roster of committee members. Dr. Helen Sunshine, Executive Secretary, Genetic Basis of Disease Review Committee, National Institute of General Medical Sciences, National Institutes of Health, Room 949, Westwood Building, Bethesda, Maryland 20205 (Telephone 301–496–7585) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–862, Genetics Research, National Institute of General Medical Sciences, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b (4) and (5) of that Circular)

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2755 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

Maternal and Child Health Research Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Maternal and Child Health Research Committee, National Institute of Child Health and Human Development, on March 15–16, 1982, in the Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Maryland.

This meeting will be open to the public on March 15, from 9:00 a.m. to 10:30 a.m. to discuss items relative to the Committee's activities including announcements by the Acting Director, Associate Director for Scientific Review and Chiefs of the Human Learning and Behavior and the Clinical Nutrition and Early Development Branches and the Executive Secretary of the Committee. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6) and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 15, from 10:30 a.m. to adjournment on March 16, for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members. Dr. Jane Showacre, Executive Secretary, Maternal and Child Health Research Committee, NICHD, Landow Building, Room 6C03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1696, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.865, Research for Mothers and Children, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular)

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2756 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

Minority Access to Research Careers Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences, National Institutes of Health, Building 31–C, Conference Room 7, on March 8–9, 1982, 9:00 a.m.

This meeting will be open to the public on March 8, 9:00 a.m. to 10:30 a.m. The meeting will consist of opening remarks and discussion of procedural matters. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for approximately the last six hours of the day on March 8, and until adjournment on March 9. It is estimated that this will occur from 10:30 a.m. to 5:00 p.m., on March 8, and on March 9 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of institutional and individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Ellen Casselberry, Public Information Officer, NIGMS, Westwood Building, Room 9A–10, 5333 Westbard Avenue, Bethesda, Maryland 20205, telephone (301) 496–7301, will furnish summary minutes of the meeting and a roster of committee members.

Substantive program information may be obtained from Harriet L. Gordon, M.D., Executive Secretary, Westwood Building, Room 949, Bethesda, Maryland 20205, telephone (301) 496–7585.

(Catalog of Federal Domestic Assistance Program 13.880, Minority Access to Research Careers (MARC), National Institutes of Health, Department of Health and Human Services)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular)

Dated: January 25, 1982.

Thomas E. Malone, Ph.D.,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2757 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on February 10, 11, and 12, 1982 in Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public on February 10 at 8:30 a.m. to approximately 12:00 noon, to discuss administration, management, and special reports. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, US Code and section 10(d) of Pub. L. 92–463, on February 11 the meetings of the following subcommittees will be closed to the public from 8:30 a.m. to approximately 1:00 p.m.: Bone and Skin Diseases; Diabetes Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research. The full Council meeting will be closed to the public on February 10 from 1:00 p.m. to adjornment, February 11 from 1:00 p.m. to adjournment, and on February 12, from 8:30 to adjournment, for the review, discussin and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. George T. Brooks, Executive Secretary, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 637, Bethesda, Maryland 20205, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDK, Building 31, Room 9A46, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5765.

(Catalog of Federal Domestic Assistance Program No. 13.846–849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2949 Filed 2–2–82, 8:45 am]

BILLING CODE 4140–01–M

Pharmacological Sciences Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Pharmacological Sciences Review Committee, National Institute of General Medical Sciences, National Institutes of Health, March 11 and 12, 1982. Building 31C, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on March 11 from 8:45 a.m. to 10:00 a.m. for opening remarks and general administrative business. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for approximately 12 hours for the review, discussion, and evaluation of individual grant applications. It is anticipated that this will occur on March 11, from approximately 10:00 a.m. to 5:00 p.m. and on March 12, from 9:00 a.m. to adjournment. These applications and the discussions could reveal personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Ellen Casselberry, Public Information Officer, NIGMS, Westwood Building, Room 9A10, Bethesda, Maryland 20205, Telephone: (301) 496–7301, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from Dr. Anthony Demsey, Executive Secretary, Pharmacological Sciences Review Committee, Westwood Building, Room 950, Bethesda, Maryland, Telephone: (301) 496–7125.

(Catalog of Federal Domestic Assistance Program 13–859, Pharmacology-Toxicology Research, National Institute of General Medical Sciences, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular)

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2758 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

Population Research Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Population Research Committee, National Institute of Child Health and Human Development, on March 11–12, 1982 in the Landow Building, Conference Room "A," 7910 Woodmont Avenue, Bethesda, Maryland.

This meeting will be open to the public on March 11 from 9:00 a.m. to 10:30 a.m. to discuss the program status, new developments and projections for population research centers, program projects and institutional fellowships. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6) and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 11 from 10:30 a.m. to adjournment on March 12 for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C–08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members. Dr. Dinesh C. Sharma, Executive Secretary of the Population Research Committee, NICHD, Landow Building, Room 6C–03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1696, will furnish other information.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular)

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82–2759 Filed 2–2–82; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources, (DRR), February 8–9, 1982, Conference Rm. 10, Bldg. 31–C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

The meeting will convene at 9:00 a.m. on Febuary 8, in open session, for the regular conduct of Council business, a report of the Acting Director, DRR, staff reports by the Directors of the Animal Resources, Biomedical Research Support, Biotechnology Resources, General Clinical Research Centers, and Minority Biomedical Support Programs, a budget report by the Executive Officer, DRR, a report on the "Fixed Obligation Grant" and "Circular A–21" by a member of the Council, and a discussion relating to the updating of the DRR Five-Year Plan. The meeting will continue from approximately 12:30 p.m. to 3:00 p.m. in open session as follows: Animal Resources Program Work Group, Rm. 7A24; Biomedical Research Support Program Work Group, Rm. 8A28; Biotechnology Resources Program Work Group, Rm. 9A51; General Clinical Research Centers Programs Work Group, Conf. Rm. 10; and Minority Biomedical Support Program Work Group, Rm. 5B03. The meeting will further continue from approximately 8:00 p.m. to 10:00 p.m., in open session, in Conference Rm. 10, for the viewing of films on the 20th Anniversary of the National Primate Research Centers Programs, CARTOS, Modeling Nerves in Three Dimensions, dental research at the University of Pennsylvania Dental School General Clinical Research Centers, and remarks by Dr. James Watts, former Director, National Heart Institute.

The meeting will reconvene on Tuesday, February 9, in Conference Rm. 10, in open session, from 8:30 a.m. to approximately 11:15 a.m. for a report on the status of the Shared Instrumentation Grant application, an update on the National Research Resources Program, reports of the Council Program Work Groups to the full Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 8, from approximately 3:00 p.m. to recess, and on February 9, from approximately 11:15 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Rm. 5B10, Bldg. 31, National Institutes of Health, Bethesda, MD 20205, (301) 496-5545, will provide summaries of the meeting and rosters of the Council members. Dr. James F. O'Donnell, Acting Director, Division of Research Resources, Rm. 5B03, Bldg. 31, National Institutes of Health, Bethesda, MD 20205 (301) 496-6023, will furnish substantive program information and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Support, National Institutes of Health)

(NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular)

Dated: January 25, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82-2760 Filed 2-2-82; 8:45 am]

BILLING CODE 4140-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of Minnesota State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 24, 1982 in Chicago, Illinois to reconsider our decision to disapprove Minnesota State plan amendments IM-79-15, IM-80-7, IM-80-23, IM-81-6, and IM-81-14. These plan amendments relate to treatment of excess resources and the establishment of resources levels for medically needy recipients and applicants.

CLOSING DATE: Requests to participate in the hearing as a party must be received on or before February 18, 1982.

FOR FURTHER INFORMATION CONTACT: Lawrence Ageloff, Hearing Officer, Bureau of Program Policy, 1-G-5 East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8260.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to deny Minnesota State plan amendments 79-15, 80-7, 80-23, 81-6 and 81-14.

Section 1116(a) of the Social Security Act and 45 CFR Parts 201 and 213 establish department procedures that provide an administrative hearing for reconsideration of a denial of a State plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs the agency at the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with additional requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with additional requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issues in this matter relate to treatment of excess resources and the establishment of resource levels for medically needy applicants and recipients under the Medicaid program in the State of Minnesota. The proposed Minnesota State plan amendments IM-80-7, IM-80-23, and IM-81-6 would have allowed the State (1) to apply an individual's excess resources (those above the eligibility level) to the cost of medical care and to the cost of any reasonable item for which the individual had saved; (2) to delay applying established resource standards until 15 days after the State has notified the individual that he/she is above the standards; and (3) to determine, through action by the local agency welfare board on a case-by-case basis, whether disposal of excess resources would constitute a hardship. The proposed Minnesota State plan amendments IM-79-15, IM-81-6, and IM-81-14 propose different limits on resources, based on marital status or living arrangements, which can be retained without losing Medicaid eligibility. The above-cited proposed State plan amendments violate existing statutory or regulatory requirements under the Medicaid program.

The notice to Minnesota announcing an administrative hearing to reconsider our denial of these State plan amendments reads as follows:

January 29, 1982.

Mr. Alan A. Held,

Special Assistant, Attorney General, 515 Transportation Building, St. Paul, Minnesota 55155.

Dear Mr. Held: This is to advise you that your letter of December 30, 1981 requesting a reconsideration of the decision to disapprove Minnesota State Plan Amendments IM-79-15, IM-80-7, IM-80-23, IM-81-6, and IM-81-14 was received on December 31, 1981. You have requested a reconsideration of the issue of whether the provisions in these amendments with respect to the treatment of excess resources and establishment of resource levels for medically needy recipients and applicants conform to the requirements for approval under the Social Security Act and pertinent regulations.

I am scheduling a hearing on your request to be held on March 24, 1982 at 10 a.m. in the 8th floor conference room, 175 West Jackson Boulevard, Chicago, Illinois. If this date is not satisfactory, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff to serve as the presiding official. Please let him know if these arrangements present any problems. He can be reached on (301) 594-8260.

In your December 30 letter you also raised issues concerning (1) whether the disapprovals should be stayed pending my reconsideration; (2) whether Minnesota could retain the right to petition the Health Care Financing Administration for reconsideration of the plan amendments which you believe I did not finally disapprove in my November 9 letter; and (3) how quality control errors will be handled.

I will be addressing these issues in another letter which you will receive from my office within the coming 4 weeks.

Sincerely yours,

Carolyne K. Davis, Ph. D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: January 29, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 82-2981 Filed 2-2-82; 8:45 am]

BILLING CODE 4102-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

GENERAL SERVICES ADMINISTRATION

Intent To Prepare Environmental Impact Statement on Disposition of 19,000 Acres of Federal Property on Matagorda Island, Tex.

AGENCY: U.S. Fish and Wildlife Service (FWS), Department of the Interior, with General Services Administration (GSA) as joint lead agencies.

ACTION: Notice.

SUMMARY: This notice advises the public that FWA and GSA intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the disposition of 19,000 acres of federal property located on Matagorda Island, Texas. A public meeting regarding this proposal and preparation of the EIS will also be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: A public meeting will be held in Corpus Christi, Texas, on March 8 from 9 a.m. to 11 p.m. at Bayfront Plaza Convention Center, Room 223, 1901 North Shoreline. Oral presentations shall be limited to 10 minutes; written statements may be submitted if the 10 minutes limitation is deemed to be inadequate to present all of the information that a given witness has to offer. Written comments on the scope of the EIS must be *received* by March 11, 1982.

ADDRESSES: Persons interested in making an oral presentation at the public meeting should call or write Mr. Thomas Smith at the address below. Those persons submitting a notice of intent to participate will be given first priority for oral presentations at the public meetings.

Written comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Smith, Acting ARD–ARW, USFWS, Regional Office, P.O. Box 1306, Albuquerque, New Mexico 87103, Phone: (505) 766–2174 or FTS 474–2174.

SUPPLEMENTARY INFORMATION: David Fisher, Office of the Solicitor, Department of the Interior, is the primary author of this document. FWS and GSA propose the following three step action:

Step 1

Express termination of the November 20, 1971, Memorandum of Understanding between the Secretary of the Department of the Air Force and the Secretary of the Interior covering wildlife management of property at Matagorda Island Air Force Range, Texas.

Step 2

FWS withdraws its application, filed November 17, 1975, with GSA, which requested transfer of the 19,000 acres excess federal property to FWS under provisions of Pub. L. 80–537.

Step 3

GSA, subsequent to steps 1 and 2, above, will convey, or authorize the transfer of, title to said federal property to the State of Texas. The property would be administered by Texas Parks and Wildlife Department as a State Park/Wildlife Management Area, said conveyance or transfer to be completed under the provisions of either 16 U.S.C. 667b or 40 U.S.C. 484(k)(2).

The Purpose and Need for Action: The purpose of this proposed action is to preserve the existing natural character of the 19,000 acres of federal lands on Matagorda Island through appropriate management by the Texas Parks and Wildlife Department as described in its "Matagorda Island Conceptual Plan" dated October 22, 1981. The proposed EIS will provide decisionmakers with the factual data and analysis necessary to reach a reasonable solution to management of the 19,000 acres of federal property.

The Principal Identified Alternatives:

(1) No action.

(2) Preferred Alternative. FWS to terminate expressly the 1971 Memorandum of Understanding between Departments of Air Force and Interior; FWS to withdraw its application to GSA for transfer of the 19,000 acres of federal property; GSA to convey or authorize the conveyance of the 19,000 acres of federal property to State of Texas to be administered by Texas Parks and Wildlife Department as a State Park/ Wildlife Management Area.

(3) Transfer administrative jurisdiction of all federal lands to FWS.

(4) Joint Federal-State ownership.

(5) No State of federal (FWS) management. Federal lands conveyed to other public bodies or the private sector through GSA disposition procedures.

The scoping and planning process is intended to identify the major impacts to be expected if this proposed action is implemented as well as to identify all significant issues which must be covered in the EIS. The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4331, *et seq.*), Council on Environmental Quality regulations (40 CFR Parts 1500–1508), other appropriate federal regulations, and FWS procedures for compliance with those regulations. The Draft EIS is expected to be made available to the public in May 1982.

Dated: January 28, 1982.

Robert A. Jantzen,

Director, Fish and Wildlife Service, U.S. Department of the Interior.

Roy Markon,

Commissioner, Federal Property Resources Service, General Services Administration.

[FR Doc. 82-2725 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Potawatomi Indian Nation, Inc.

January 20, 1982

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

Pursuant to 25 CFR 54.8(a) notice is hereby given that the Potawatomi Indian Nation, Inc., c/o Philip V. Alexis, P.O. Box 718, Dewitt, Michigan 48820, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on November 23, 1981. The petition was forwarded and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or opposition to the group's petition. Any information submitted will

be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242.

Roy H. Sampsel,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 82-2776 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-22023]

Alaska Native Claims Selection

On November 15, 1978, Cook Inlet Region, Inc., filed selection application AA-22023, under the provisions of Sec. 12(b)(6) of the act of January 2, 1976 (89 Stat. 1151), and I.C. (2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976, for the surface and subsurface estates of certain lands located in Anchorage, Alaska.

Section 12(b)(6) of the act of January 2, 1976, authorizes conveyance of lands to Cook Inlet Region, Inc., from a selection pool established by the Secretary of the Interior and the General Services Administrator.

The lands are located within the boundaries of Cook Inlet Region. With the agreement of the State of Alaska and Cook Inlet Region, Inc., the lands within selection AA-22023 were placed in the pool of properties available for Cook Inlet Region, Inc., subject to valid existing rights, by notice dated May 10, 1979.

The selection application of Cook Inlet Region, Inc., as to the lands described below is properly filed and meets the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands are considered proper for acquisition by Cook Inlet Region, Inc., and are hereby approved for conveyance pursuant to Sec. 12(b)(6) of the act of January 2, 1976:

Seward Meridian, Alaska (Partially Surveyed)

T. 13 N., R. 2 W.,
Sec. 7, lot 10.
Containing 19.06 acres.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act (ANCSA).

The grant of the above-described lands shall be subject to:

Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

Section 12(b)(6) of Public Law (Pub. L.) 94-204 provides that conveyances pursuant to this section shall be made in exchange for lands or rights to select lands outside the boundaries of Cook Inlet Region as described in Sec. 12(b)(5) of this act and on the basis of values determined by appraisal. The lands described above have been appraised at a value of $721,290. Under Sec. I.C.(2)(e) of the Terms and Conditions, this property constitutes 1,442.58 acre/equivalents. Upon acceptance of title to these lands, Cook Inlet Region, Inc., will relinquish its selection rights to 1,442.58 acres of its out-of-region entitlement.

Conveyance of the remaining entitlement to Cook Inlet Region, Inc., shall be made at a later date.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for 4 consecutive weeks, in the Anchorage Daily News.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, provided, however, pursuant to Pub. L. 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

Appeals should be filed with the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until March 5, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Cook Inlet Region, Inc., P.O. Drawer 4-N, Anchorage, Alaska 99509.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-2775 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-84-M

Montana; Realty Action—Exchange

January 26, 1982.

AGENCY: Bureau of Land Management, Lewistown District Office, Interior.

ACTION: Notice of Realty Action M 49690, Exchange of public and private lands in Blaine County, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian, Montana

T. 37 N., R. 23 E.,
Sec. 22, All.
T. 37 N., R. 26 E.,
Sec. 9, S½S½;
Sec. 10 W½SW¼ and E½SE¼; and
Sec. 11, W½SW¼.
Aggregating 1,040 acres of public land.

In exchange for these lands, the United States Government will acquire the surface estate in the following described lands:

Principal Meridian, Montana

T. 33 N., R. 21 E.,
Sec. 2, Lots 2, 3, and 4.
T. 34 N., R. 21 E.,

Sec. 34, E½ and SW¼; and
Sec. 35, W½.

Aggregating 918.59 acres of private land.

DATES: Until March 22, 1982, interested parties may submit comments to the District Manager, Bureau of Land Management, Drawer 1160, Lewistown, Montana 59457. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of this Department.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report, is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The proposed exchange is to acquire non-Federal land which has high public value for livestock grazing administration, access and recreation management. In return, approximately 1,040 acres of isolated land suitable for agriculture would be transferred to private ownership. The proposed exchange will benefit public needs and improve manageability of public lands.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945, for the lands being transferred out of Federal ownership.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership.

3. All valid existing rights (e.g. rights-of-way, easements and leases of record).

4. Value equalization by cash payment or acreage adjustment.

5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be well served by completion of this exchange.

Kannon Richards,

Acting State Director.

[FR Doc. 82-2777 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-84-M

[W-36996]

Wyoming; Termination of Proposed Withdrawal

1. The Defense Civil Preparedness Agency, Department of Defense filed an application for withdrawal of Section 25, T. 35 N., R. 94 W., Sixth Principal Meridian, Wyoming, for a Decision Information Distribution System Facility on September 22, 1972. This application was published in the **Federal Register** in the December 15, 1972, issue, which segregated the lands from all forms of appropriation under the public land laws including the mining laws but not the mineral leasing laws.

2. This withdrawal proposal did not ripen into a withdrawal. The Defense Civil Preparedness Agency, of the Department of Defense, no longer exists and the Decision Information Distribution System Facility proposed at this location is no longer a viable project. The former program manager has withdrawn the application for the withdrawal.

3. Therefore, pursuant to the regulations contained in 43 CFR 2310.1-4, the application for withdrawal is hereby terminated for the following described lands:

Sixth Principal Meridan, Wyoming

T. 35 N., R. 94 W.,
Sec. 25.

Containing 640 acres.

4. At 7:45 a.m. on March 5, 1982, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirments of applicable law. All valid applications received at or prior to 7:45 a.m. on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter, shall be considered in the order of filing.

5. The lands will be open to location under the United States mining laws at 7:45 a.m. on March 5, 1982.

6. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

Dated: January 25, 1982.

Maxwell T. Lieurance,

State Director, Wyoming.

[FR Doc. 82-2778 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon and Washington; Call for General Expressions of Leasing Interest in Coal

January 25, 1982.

This call for general expressions of coal leasing interest is made in order to assess the extent of interest for possible competitive lease sales for federal coal. This is not a formal expression of interest for leasing (43 CFR Part 3425) but a call for nomination of areas for consideration for federal coal exploration and help in establishing land-use planning priorities (43 CFR Part 3420). Along with the nominated areas, coal companies, state governments, and members of the public may submit nonconfidential coal geology and economics data for this inventory phase. The data received from this call will be used along with existing data to prioritize areas where further coal and other resource information needs to be gathered for preparation of land-use plans for Oregon and Washington.

Responses to this notice may be received until March 31, 1982.

Responses should be sent to: State Director (930), Bureau of Land Management, Oregon State Office, 729 NE Oregon Street (P.O. Box 2965), Portland, OR 97208 and to: Conservation Manager, Western Region, U.S. Geological Survey, 345 Middlefield Road, MS-80, Menlo Park, CA 94025.

For further information contact: Durga Rimal, Coal Coordinator, Oregon State Office (933), Bureau of Lamd Management, 729 NE Oregon Street (P.O. Box 2965), Portland, OR 97208, Phone: 503-231-6976; and Ron Michelson, Deputy Conservation Manager for Resource Evaluation, U.S. Geological Survey, 345 Middlefield Road, MS-80, Menlo Park, CA 94025, Phone: 415-323-2053.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-2723 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 27255, Survey Group 115]

Minnesota; Filing of Plats of Survey

1. On February 9, 1981, the plats representing the survey of 14 islands in Vermilion Lake, T. 63 N., R. 17 W., Fourth Principal Meridian, Minnesota, which were omitted from the original survey, were accepted. They will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on May 4, 1982.

Fourth Principal Meridian, Minnesota.

T. 63 N., R. 17 W.,
Tract Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50.

2. The character of Tract Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 is similar in all respects to that of the adjacent surveyed lands.

a. Elevations on the island Tract No. 37 range up to approximately 4 feet

above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar and birch. Borings of the pine trees showed several to be up to 80 years old.

b. Elevations on the island Tract No. 38 range up to approximately 8 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, fir, and aspen.

c. Elevations on the island Tract No. 39 range up to approximately 10 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, and birch. Borings of the pine trees showed several to be up to 105 years old.

d. Elevations on the island Tract No. 40 range up to approximately 3 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, fir, aspen, birch, and spruce.

e. Elevations on the island Tract No. 41 range up to approximately 5 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, birch, and alder. Borings of pine trees showed several to be up to 80 years old.

f. Elevations on the island Tract No. 42 range up to approximately 4 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, fir, aspen, birch, spruce, and maple.

g. Elevations on the island Tract No. 43 range up to approximately 4 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine and birch. Borings of pine trees showed several to be up to 80 years old.

h. Elevations on the island Tract No. 44 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of alder, birch, and ash.

i. Elevations on the island Tract No. 45 range up to approximately 4 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, aspen, birch, and spruce. Borings of pine trees showed several to be up to 100 years old.

j. Elevations on the island Tract No. 46 range up to approximately 2½ feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar and birch.

k. Elevations on the island Tract No. 47 range up to approximately 4 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, aspen, birch, spruce, and ash. Borings of the pine trees showed several to be up to 140 years old.

l. Elevations on the island Tract No. 48 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, fir, ash, and alder. Borings of pine trees showed several to be up to 75 years old.

m. Elevations on the island Tract No. 49 range up to approximately 5 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar and birch.

n. Elevations on the island Tract No. 50 range up to approximately 3 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, fir, and alder.

o. The soil composition of Tract Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 is of a thin layer of organic matter on a base of glacial till. Undergrowth of said tracts consists of hazel, willow, brush, and native grasses.

3. The islands described above were found to be over 50 percent upland in character with the purview of the Swamp Land Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, the lands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

All inquiries relating to these lands should be sent to the Chief, Division of Lands and Minerals Operations, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before May 4, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-2724 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nomination of the following property is being considered for listing in the National Register and was received by the National Park Service on January 27, 1982. Waiver of the 15-day public commenting period following this publication is necessary for the Ohio nomination listed below in order that listing be accomplished on or about February 2, 1982, the date when the property must be listed in order that the owner complete private financing requirements for the building's rehabilitation, which will be assisted by the historic preservation provisions of the Economic Recovery Tax Act of 1981. Listing, accordingly, will assist in the preservation of this property.

Carol D. Shull,

Acting Keeper of the National Register.

Ohio

Montgomery County

Dayton, *Biltmore Hotel,* 210 N. Main St.

[FR Doc. 82-2779 Filed 2-2-82; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 26, 1982. Pursuant to § 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 18, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

North Carolina

Swain County

Cherokee vicinity, *Oconaluftee Archeological District*

[FR Doc. 82-2780 Filed 2-2-82; 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 26, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

MC–F–14720, filed October 22, 1981 and supplemented January 12, 1982. (Supplement publication. Orginally published in the **Federal Register** issue of November 16, 1981. KLOSE BROS., INC. (Klose)—Purchase—P. CALLAHAN, INC. (Callahan). Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. The purpose of this supplemental publication is to modify the original publication by including in the transaction the purchase by Klose of all the contract carrier authority as well as all of the common carrier authority held by Callahan. Klose is purchasing the interstate operating rights of Callahan contained in Permit Nos. MC–119140 (Sub-Nos. 1, 3, and 4), which authorize the transportation, as a contract carrier, of (1) *beds, couches, bed springs, mattresses, and parts thereof,* (a) from Philadelphia, PA, to points in DE and NJ, (b) from Philadelphia, PA, to points in MD, NY, VA, and DC, and (c) from Pennsauken, NJ, to points in PA; and (2) *returned shipments* of the above specified commodities, in the reverse direction, under continuing contracts with Honorbilt Products, Inc. Note: TA has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–2746 Filed 1–2–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; 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** on 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. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. 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 nor 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 satisfied 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. OP2–17

Decided: January 20, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 152582 (Sub-2), filed January 11, 1982. Applicant: PROPST DISTRIBUTING, INC., Route 2, Box 795, Lincolnton, NC 28095. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 North Second St., Clearfield, PA 16820, (814) 765–9611. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 155793 (Sub-1F), filed: January 7, 1982. Applicant: CALIFORNIA/NEVADA BIG VALLEY EXPRESS, INC., 2455 Walton Ave., Central Valley, CA 96019. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, (702) 882–5649. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 160022, filed: January 8, 1982. Applicant: OVERLAND TERRY TRANSPORTATION INC., P.O. Box 458, Pauls Valley, OK 73075. Representative: David B. Schneider, Suite 200, 401 W. Sheridan, Oklahoma City, OK 73102, (405) 232–9990. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Volume No. OP–3–017

Decided: January 27, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 143885 (Sub-3), filed: December 4, 1981, previously published in the **Federal Register** issue of January 8, 1982. Applicant: HARLAND A. WILCOX and LEROY H. WILCOX, d.b.a. WILCOX TRUCKING, 206 Charles Street, Elk Rapids, MI 49629. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., N.W., Washington, DC 20036, (202) 233–5900. Transporting for or on behalf of the United States Government, (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., and (2) *general commodities* (except classes A and B explosives), between South Haven, Cableton, Covert, Toquin, Lamson, Bay Shore, Charlevoix, Ellsworth, Harpers, Central Lake, Bellaire, Alden, Rapid City, Barker Creek, Williamsburg, Bates, State Hospital, Grawn, Interlocken, Henry, Kaleva, Chief Lake, Norwalk, Douglas, Wealthy, and Rennies, MI, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of part (2) of the application is to substitute motor service for abandoned rail service. This republication corrects the territorial description under part (2).

MC 160174, filed: January 19, 1982. Applicant: JACK B. LOVE, d.b.a. J.B.L. FREIGHT SYSTEMS, 1420 Gamma Pl., Anaheim, CA 92805. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8107. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 160164, filed: January 18, 1982. Applicant: GARY HODGIN & BILL WHITMORE, d.b.a. BANDIT TRUCKING CO., 1915 S.E. Tacoma, Portland, OR 97202. Representative: Gary Hodgin (same address as applicant), (503) 236–3853. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160125, filed January 15, 1982. Applicant: ROBERT C. PEDERSON, d.b.a. H & P TRUCKING, 7635 S.E. Johnson Creek Blvd. SP #29, Portland, OR 97206. Representative: Robert C. Pederson (same address as applicant), (503) 775–0467. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160115, filed January 15, 1982. Applicant: PETER J. SAVAGE, 635 S.W. 11th, Portland, OR 97214. Representative: (Same as above) (503) 233–5766. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160105, filed January 15, 1982. Applicant: BRETT L. SCHMIDT, 5556 Willapa Ct., N.E., Salem, OR 97303. Representative: Brett L. Schmidt (same address as applicant), (503) 393–4015. Transporting *food and other edible products and byproducts* intended for human consumption (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 152774 (Sub-1), filed January 15, 1982. Applicant: LEO GLYNN, d.b.a. EMERALD DISTRIBUTION CO., 3101 Mercier Ste. 262, Kansas City, MO 64111. Representative: Alex M. Lewandowski, 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105, (816) 221–1464. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP4–28

Decided: January 26, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 160186, filed January 19, 1982. Applicant: FORD ANTHONY SLOAN, d.b.a. F.A.S. TRUCKING, 2023 N. Willamette Blvd., Portland, OR 97217. Representative: Ford Anthony Sloan (same address as applicant), (503) 283–4885. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–2741 Filed 2–2–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 226]

Motor Carriers; Permanent Authority Decisions, Restriction Removals; Decision-Notice

Decided: January 28, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 5227 (Sub-89)X, filed January 25, 1982. Applicant: ECKLEY TRUCKING, INC., P.O. Box 156, Mead, NE 68041. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. Sub Nos. 31, 32, 40, 49F, 54F, 57F, 61F, 63F, 76F, (1) broaden commodity description in Sub 31 from roofing materials, in Sub 32 from cooling towers and cooling tower parts and accessories, in Subs 40, 57F, 63F, 76F, from lumber and lumber mill products, in Sub 49F from plastic pipe, and in Sub 54F from metal building parts and components to "construction materials"; (2) broaden territorial description in Sub 49F, Finney County, KS (Garden City, KS); in Sub 61F, Will County, IL (Wilmington, IL); (3) to radial authority in all Subs; (4) remove plantsite or traffic originating at named origin restrictions in Subs 31, 32 and 40.

MC 127304 (Sub-23)X, filed January 21, 1982. Applicant: CLEAR WATER TRUCK COMPANY, INC., 9101 North West Street, Valley Center, KS 67148. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Sub 5: (1) Broaden to "food and related products" from meats, meat products, and meat by-products, and articles distributed by meat packinghouses and hides; (2) remove the commodities in bulk restriction; (3) remove facilities limitation; and (4) broaden the authority to between points in the U.S. (except AK and HI), under continuing contract(s) with a named shipper.

MC 145736 (Sub-2)X, filed January 21, 1982. Applicant: EDMOND JOSEPH RAINVILLE, 135 Homeside Ave., Stoney Creek, Ontario, Canada, L8G 3G9. Representative: William J. Hirsch, 43 Court St., Buffalo, NY 14202. Sub-No. 1: Broaden crane boom sections to "machinery".

MC 148832 (Sub-6)X, filed January 4, 1982. Applicant: DELTA MOTOR FREIGHT, INC., 1616 Rowe Boulevard, Poplar Bluff, MO 63901. Representative: Ronald D. Dodds (same address as applicant). Subs 2 and 4, Broaden: Subs 2 and 4, general commodities, with exceptions, to "general commodities (except classes A and B explosives)"; Sub 4, livestock, fertilizer, feed, petroleum lubricating oils and greases, and empty containers to "farm products, chemicals and related products, foods and related products, petroleum, natural gas and their products, and containers"; regular route service to all intermediate points; remove restrictions: at East St. Louis, IL to pick-up of stoves, feed, tankage, fertilizer and meat scraps; against joinder for purposes of providing through service; broaden off-route points of Bardley, Greer, Thomasville, Koshkonong, Couch and Myrtle to Ripley and Oregon Counties, MO and Randolph County, AR; Salem, Ava, Hartville, Briar, Thimble Store, Wallace Store, and Bakersfield, MO, to Dent, Douglas, Wright, Ripley, Oregon and Ozark Counties, MO; Bartlett, Chicopee, Garwood, Ham's Store, Leeper, Mill Spring, and Van Buren, MO, to Shannon, Carter, Reynolds and Wayne Counties, MO; Elsinore, Hunter and Redford to Carter County, MO; points in Ripley County, MO and Randolph County, AR, within 10 miles of MO-AR State line to Ripley County, MO and Randolph County, AR; Brookins and Beech Corner to Greene County, AR; Piedmont and points within 20 miles thereof to Wayne, Butler, Carter, Iron, Madison, Reynolds, and Shannon Counties, MO; Springfield, MO, to Greene County, MO; and to radial authority.

MC 152634 (Sub-2)X, filed January 8, 1982. Applicant: ATLANTIC VAN LINES, INC., 1002 Wilso Drive, Baltimore, MD 21223. Representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Lead certificate, broaden prints, graphics, photographs, drawings, antiques, decorative art, textiles, porcelain, ceramics, glass, and art objects, and their display materials to "such commodities as are used by or dealt in by museums, exhibitors, art collectors, art dealers and galleries".

[FR Doc. 82-2740 Filed 2-2-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29814]

Rail Carriers; Diamond Shamrock Corporation-Petition for Exemption

AGENCY: Interstate Commerce Commission.

SUMMARY: The Interstate Commerce Commission exempts the operation by Diamond Shamrock Corporation of its proposed switching of B. F. Goodrich Corporation railroad cars over 1800 feet of Port Terminal Railroad Association track at Houston, TX from the requirement of prior approval under 49 U.S.C. 10901.

DATES: Exemption effective on March 5, 1982. Petitions to reopen for reconsideration must be filed by February 23, 1982 and petitions for stay must be filed by February 12, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th and Constitution Ave., NW., Washington, D.C. 20423.

(2) Petitioner's Representatives, Paul M. Donovan, 743 Investment Building, 1511 K Street, NW., Washington, D.C. 20005.

For a copy of the full decision, write to the Interstate Commerce Commission, Room 2227, Washington, D.C. 20423, or call toll free 800-424-5403.

FOR FURTHER INFORMATION CONTACT: Richard A. Kelly, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision in F.D. 29814.

Dated: January 27, 1982.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-2742 Filed 2-2-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Delegation of Authority No. 98]

Deputy Administrator and Assistant Administrators; Delegation of Authority

Pursuant to the authority delegated to me by IDCA Delegation of Authority No. 1 from the Director of the International Development Cooperation Agency (44 FR 57521) and in accordance with the provisions of section 624(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2384), it is directed as follows:

In the event of the absence, death, resignation, or disability of the Administrator, the following designated officers of the Agency for International Development shall, in the order of succession indicated, act as Administrator:

(1) Deputy Administrator,

(2) Assistant Administrator for External Relations,

(3) Assistant Administrator for Program and Policy Coordination,

(4) Senior Assistant Administrator for Science and Technology.

This Delegation of Authority amends and supersedes Delegation of Authority No. 98 of January 15, 1980 (45 FR 9886, 9887).

This Delegation of Authority is effective immediately.

Dated: January 19, 1982.

M. Peter McPherson,

Administrator.

[FR Doc. 82-2773 Filed 2-2-82; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

Drycleaning Machinery From West Germany; Change of Date of Commission Determination

Notice is hereby given that by February 4, 1982, the Commission will determine whether there exist changed circumstances sufficient to warrant a review, under section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and § 207.45 of the Commission's Rules of Practice and Procedures, of the Commission's affirmative determination in Investigation No. AA-1921-99, Drycleaning Machinery from West Germany. A date for the determination had previously been announced in the Commission's notice requesting comments concerning the institution of a review investigation and had been published in the **Federal Register** of November 25, 1981 (46 FR 57776). The date of the determination is changed pursuant to § 201.14(b) of the Commission's Rules of Practice and Procedures.

By order of the Commission.

Issued: January 29, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-2792 Filed 2-2-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-49 (Final)]

Fireplace Mesh Panels From Taiwan; Final Antidumping Investigation

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigation.

SUMMARY: As a result of a preliminary determination by the United States Department of Commerce that there is a reasonable basis to believe or suspect that exports of fireplace mesh panels from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-49 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. For the purposes of this investigation, fireplace mesh panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of a kind used in the manufacture of safety screening by U.S. manufacturers of fireplace accessories and zero-clearance fireplace. Fireplace mesh panels are provided for either in item 642.87 or item 654.00 of the Tariff Schedules of the United States depending on their stage of processing.

EFFECTIVE DATE: January 27, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Miriam A. Bishop, Office of Investigations, U.S. International Trade Commission, Room 350, 701 E Street, NW., Washington, D.C. 20436; telephone 202-523-0291.

SUPPLEMENTARY INFORMATION: On September 18, 1981, the Commission unanimously determined, on the basis of the information developed during the course of investigation No. 731-TA-49 (Preliminary), that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of fireplace mesh panels from Taiwan, which were allegedly being sold in the United States at LTFV. As a result of the Commission's affirmative preliminary determination, the Department of Commerce continued its investigation into the question of LTFV sales. Unless the investigation is extended, the final LTFV determination will be made by the Department of Commerce on or before April 2, 1982.

Written Submissions

Any person may submit to the Commission a written statement of information pertinent to the subject of the investigation. A signed original and nineteen (19) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, on or before April 8, 1982. All written submissions except for confidential business data will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

A staff report containing preliminary findings of fact will be available to all interested parties on March 24, 1982.

Public Hearing

The Commission will hold a public hearing in connection with this investigation for 10 a.m., on Tuesday, April 13, 1982, in the Hearing Room of the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 25, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 9:30 a.m., on March 29, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing statements must be filed on or before April 8, 1982.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules of practice and procedure (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing statements and to new information. The Commission will not receive prepared testimony for the public hearing, as would otherwise be provided for by rule § 201.12(d). All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing statements in accordance with § 207.22. Post hearing briefs will also be accepted within a time specified at the hearing.

For further information concering the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 207.20 of the Commission's rules of practice and procedure (19 CFR 207.20, 44 FR 76472).

By order of the Commission.

Issued: January 28, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-2793 Filed 2-2-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-101]

Certain Hot Air Corn Poppers and Components Thereof; Settlement Agreement, Recommended Termination, and Request for Public Comments

AGENCY: International Trade Commission.

ACTION: Request for public comments on the recommended termination of two parties as respondents in the above-captioned investigation based on a settlement agreement.

SUMMARY: Notice is hereby given that the presiding officer in this investigation has issued an order recommending that the Commission grant a joint motion by the complainant and two respondents to terminate the investigation with respect to those respondents on the basis of a settlement agreement enterd by the parties. Before taking final action on the motion, the Commission seeks written comments on the proposed termination from interested members of the public.

DEADLINE: All comments must be received on or before March 5, 1982.

SUPPLEMENTARY INFORMATION: The Commission is conducting investigation No. 337-TA-101 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States of certain hot air corn poppers and components thereof, or in the sale of such articles, which are alleged to infringe claims 1, 2, 3, and 5 of U.S. Letters Patent 4,178,843, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

On December 4, 1981, the complainant, Wear-Ever Aluminum, Inc. (Wear-Ever), and respondents The West Bend Co.—a Division of Dart Industries, Inc. (West Bend) and Chiap Hua Clocks and Watches Ltd. (Chiap Hua) filed a joint motion (Motion No. 101-39) to terminate the investigation with respect to those respondents under the provisions of § 210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.51). The basis for the proposed termination is a settlement agreement entered by the complainant, West Bend and Chiap Hua. The motion was supported by the Commission investigative attorney. On December 23, 1981, the presiding officer issued an order recommending that Motion No. 101-39 be granted. The settlement agreement and the proposed termination are now before the Commission for final action.

The substantive provisions of the settlement agreement between Wear-Ever, West Bend and Chiap Hua are as follows:

1. West Bend, Chiap Hua, and Wear-Ever agree to enter a joint motion to terminate the Commission's investigation. Such termination is without prejudice with respect to Wear-Ever's right to bring an action against Chiap Hua in respect of any device other than hot air corn poppers and components thereof manufactured for or sold to West Bend.

2. West Bend and Wear-Ever agree to the prompt entry of a stipulation dismissing without prejudice the complaint and counterclaim in the civil action in the United States District Court for the Eastern District of Wisconsin concerning the validity and infringement of U.S. Letters Patent 4,178,843.

3. West Bend agrees to pay to Wear-Ever prior to the close of business on December 31, 1981, a certain amount for a worldwide covenant not to sue for all past, present, and future infringement of U.S. Letters Patent 4,178,843 and of all other patents of Wear-Ever throughout the world subsequently issued covering features of Wear-Ever's current models 72000 or 73000 hot air corn poppers.

4. In the event that the Commission does not terminate the investigation with respect to both West Bend and Chiap Hua, Wear-Ever agrees to repay to West Bend within ten days the amount payable under paragraph 3 of the agreement, the agreement shall be terminated, and the parties shall be restored to their respective positions as if the agreement had never been made.

5. The agreement does not constitute an admission by West Bend or Chiap Hua of the validity and/or infringement of U.S. Letters Patent 4,178,843 or any other patent belonging to Wear-Ever on hot air corn poppers or components thereof.

6. Chiap Hua agrees that it will neither sell nor import into the United States, except for sale to West Bend, hot air corn poppers identical or substantially identical to West Bend's hot air corn popper model No. 5459.

7. Wear-Ever, Chiap Hua, and West Bend shall not publicize the terms of the agreement, nor make use of the terms of the agreement in connection with any advertising or sales or otherwise for the purpose of gaining a competitive advantage in the marketplace. However, disclosure of the terms of the agreement may be made as reasonably required in connection with any negotiations with potential licensees or as may be required by law. Wear-Ever, West Bend, and Chiap Hua will expressly instruct their employees, agents, representatives, and distributors to abide by the foregoing provisions.

8. The agreement shall be binding upon and inure to the benefit of the successors of the businesses of the parties and shall be assignable to the purchasers of all or substantially all of the assets of their businesses.

9. The agreement shall be governed by Illinois law.

10. The agreement shall not be effective until all of the representatives of the parties have affixed their signatures.

A nonconfidential version of the settlement agreement is available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

All comments must conform to the requirements of § 201.8 of the Commission's rules (19 CFR 201.8) and must be addressed to the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Room 224, Washington, D.C. 20436, telephone 202-523-0350.

By Order of the Commission.

Issued: January 29, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-2794 Filed 2-2-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-96]

Certain Modular Pushbuttom Switches and Components Thereof; Termination of Investigation on the Basis of Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Termination of the investigation on the basis of settlement agreements.

SUPPLEMENTARY INFORMATION: Complainant ITT Schadow, Inc., moved for termination of this investigation on the basis of 3 settlement agreements. Respondents Toneluck Electronics Industrial Co., Ltd., Electronic Components Groupe, Inc., Hosiden Company, Ltd., Hosiden America

Corporation, and Tanaka Electronics Industries Co., Ltd., supported complainant's motion. The Commission investigative attorney opposed the motion.

On September 23, 1981, the Commission published a notice in the **Federal Register** requesting comment from the public and interested Federal agencies on the settlement agreements (46 FR 47031). The only objection to termination on the basis of the settlement agreements came from the Justice Department which noted that termination of the investigation would leave important patent issues unresolved.

On January 27, 1982, the Commission terminated this investigation on the basis of the settlement agreements. The Commission concluded that the presence of the Commission investigative attorney is not required at settlement negotiations and that the public interest would not be adversely affected by the absence of Commission rulings on the patent issues noted by the Justice Department.

Notice of the institution of this investigation was published in the **Federal Register** of January 28, 1981 (46 FR 9262).

Copies of the Commission's Action and Order and all other nonconfidential documents in the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0074.

By order of the Commission.

Issued: January 28, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–2795 Filed 2–2–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 104–TAA–8]

Molasses From France; Countervailing Duty Investigation; Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of a countervailing duty investigation.

SUMMARY: On June 19, 1971 in T.D. 71–118, the Department of the Treasury (Treasury) imposed countervailing duties, under section 303 of the Tariff Act of 1930, on molasses imported from France. Imports of molasses from France are currently provided for under item 155.40 of the Tariff Schedules of the United States.

On January 1, 1980, the provisions of the Trade Agreements Act of 1979 became effective, and on January 2, 1980, the authority for administering the countervailing duty statute was transferred from Treasury to the Department of Commerce (Commerce). On May 13, 1980, Commerce published a notice in the **Federal Register** (44 FR 31455) of intent to conduct an annual administrative review of all outstanding countervailing duty orders.

On March 28, 1980, the U.S. International Trade Commission received a request from the Delegation of the Commission of the European Communities for an investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with respect to molasses from France. In accordance with section 104(b)(3) of the Act, the Commission notified the Department of Commerce of its receipt of the request for this investigation.

As required by section 751(a)(1) of the Tariff Act of 1930, Commerce has conducted its first annual administrative review of the countervailing duty order on molasses from France. As a result, on October 28, 1981, Commerce published in the **Federal Register** (46 FR 53200), its final determination that, for the period of review, there were no net subsidies on molasses from France. The review covers the period January 1, 1980, through December 31, 1980, and is limited to the program of restitution payments made through the Guidance and Guarantee Fund operated under the Common Agricultural Policy of the European Communities (EC). This was the only program found countervailable in the final determination. According to Commerce the restitution payments are granted only when the world price of molasses as established by international markets is lower than the EC "threshold price." The EC did not make any restitution payments on exports of molasses from France for the period of review, although Commerce maintains that the program itself remains in effect. Prior to Commerce's review, imports of molasses from France were subject to a maximum countervailing duty of $1.80 per 100 kilograms. Pursuant to section 104(b)(2) of the Trade Agreements Act, the U.S. International Trade Commission is instituting this countervailing duty investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of molasses from France provided for under item 155.40 of the Tariff Schedules of the United States, covered by the countervailing duty order, if the order were to be revoked.

EFFECTIVE DATE: January 26, 1982.

FOR FURTHER INFORMATION CONTACT: Larry Reavis, U.S. International Trade Commission, Washington, D.C. 20436 (202–523–0296).

SUPPLEMENTARY INFORMATION: *Public Hearing:* The Commission will hold a public hearing in connection with this investigation on April 5, 1982, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10 a.m. The hearing on this investigation will be held concurrently with the hearing on sugar from the European Communities (Investigation No. 104–TAA–7). Requests to appear at the hearing should be filed with the Office of the Secretary, U.S. International Trade Commission, Washington, D.C. 20436, not later than the close of business (5:15 p.m.) on March 18, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10 a.m., on March 22, 1982, in room 117 of the U.S. International Trade Commission Building. Prehearing statements must be filed with the Commission on or before March 31, 1982.

A staff report containing preliminary findings of fact in this investigation will be available to all interested parties on March 17, 1982.

Testimony at the public hearing is governed by § 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing statements and to new information. The Commission will not receive prepared testimony for the public hearing, as would otherwise be provided for in rule § 201.12(d). All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing statements in accordance with rule § 207.22. Posthearing briefs should be filed with the Commission by no later than the close of business, April 13, 1982.

Written submissions.—Any person may submit to the Commision on or before April 13, 1982, written statements of information pertinent to the subject matter of the investigation. A signed original and nineteen true copies of such statements must be submitted in accordance with § 201.8 of the Commission's rules of practice and procedure, 19 CFR 201.8 (1980). All written submissions, except confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the rules of practice and procedure (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 207.20 of the Commission's rules of practice and procedure (19 CFR 207.20, 44 FR 76458).

By order of the Commission.

Issued: January 27, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-2796 Filed 2-2-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-115]

Certain Power Woodworking Tools, Their Parts, Accessories and Special Purpose Tools; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: January 26, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82-2797 Filed 2-2-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-7]

Sugar From The European Communities; Countervailing Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a countervailing duty investigation.

SUMMARY: On July 31, 1978 in T.D. 78-53, the Department of the Treasury (Treasury) imposed countervailing duties, under section 303 of the Tariff Act of 1930, on sugar imported from the European Communities. Imports of sugar from the European Communities, currently provided for under items 155.20 and 155.30 of the Tariff Schedules of the United States were subject to countervailing duties of 10.84 cents per pound.

On January 1, 1980, the provisions of the Trade Agreements Act of 1979 became effective, and on January 2, 1980, the authority for administering the countervailing duty statute was transferred from Treasury to the Department of Commerce (Commerce). On May 13, 1980, Commerce published a notice in the **Federal Register** (44 FR 31455) of intent to conduct an annual administrative review of all outstanding countervailing duty orders.

On March 28, 1980, the U.S. International Trade Commission received a request from the Delegation of the Commission of the European Communities for an investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with respect to sugar from the European Communities (EC). In accordance with section 104(b)(3) of the act, the Commission notified the Department of Commerce of its receipt of the request for this investigation.

As required by section 751(a)(1) of the Tariff Act of 1930, Commerce has conducted its first annual administrative review of the countervailing duty order on sugar from the European Communities. As a result, on September 23, 1981, Commerce published in the **Federal Register** (46 FR 46984), its final determination that the net subsidy conferred was 3.5 cents per pound. On the basis of that determination, the U.S. International Trade Commission, pursuant to section 104(b)(2) of the Trade Agreements Act, is instituting this countervailing duty investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of sugar from the European Communities provided for under items 155.20 and 155.30 of the Tariff Schedules of the United States, covered by the countervailing duty order, if the order were to be revoked.

EFFECTIVE DATE: January 27, 1982.

FOR FURTHER INFORMATION CONTACT: T. Vernon Greer, Commodity-Industry Analyst, U.S. International Trade Commission, Washington, D.C. 20436 (202-724-0074).

SUPPLEMENTARY INFORMATION: *Public Hearing:* The Commission will hold a public hearing in connection with this investigation on April 5, 1982, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10 a.m. The hearing on this investigation will be held concurrently with the hearing on molasses from France (Investigation will be held concurrently with the hearing on molasses from France (Investigation No. 104-TAA-8). Requests to appear at the hearing should be filed with the Office of the Secretary, U.S. International Trade Commision, Washington, D.C. 20436, not later than the close of business (5:15 p.m.) on March 18, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10 a.m., on March 22, 1982, in room 117 of the U.S. International Trade Commission Building. Prehearing statements must be filed with the Commission on or before March 31, 1982.

A staff report containing preliminary findings of fact in this investigation will be available to all interested parties on March 17, 1982.

Testimony at the public hearing is governed by § 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing statements and to new information. The Commission will not receive prepared testimony for the public hearing, as would otherwise be provided for in § 201.12(d). All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing statements in accordance with rule § 207.22. Posthearing briefs should be filed with the Commission by no later than the close of business, April 13, 1982.

Written submissions.—Any person may submit to the Commission on or before April 13, 1982, written statements

of information pertinent to the subject matter of the investigation. A signed original and nineteen true copies of such statements must be submitted in accordance with § 201.8 of the Commission's rules of practice and procedure, 19 CFR 201.8 (1980). All written submissions, except confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the rules of practice and procedure (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 207.20 of the Commission's rules of practice and procedure (19 CFR 207.20, 44 FR 76458).

By order of the Commission.

Issued: January 27, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-2798 Filed 2-2-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

Final Judgment; U.S. v. Beven-Herron, Inc., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), the following is a *Comment* received by the Antitrust Division on the proposed Final Judgment filed in the case of *U.S.* v. *Beben-Herron, Inc., et al.*, Civil No. 81-0951, (C.D. Calif.), together with the Division's *Response* thereto.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Stephen S. Trott, United States Attorney; Leon W. Weidman, Chief, Antitrust Division; Kendra S. McNally, William L. Webber, Assistant United States Attorneys, 1441A United States Courthouse, 312 North Spring Street, Los Angeles, California 90012, Telephone: (213) 688-6579, Attorneys for Plaintiff, United States of America.

U.S. District Court Central District of California

United States of America Plaintiff, v. *Beven-Herron, Inc., and Simpson Manufacturing Co., Inc.*, Defendants.

No. CV-81-0951-RJK(Kx).

Government's Response to Comments of Snyder & Dickenson Company and Comments of Snyder & Dickenson Company.

Pursuant to the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. 16(d), the Government hereby publishes and responds to the comments of Snyder & Dickenson Company concerning the proposed Final Judgment in *United States* v. *Beven-Herron, Inc., and Simpson Manufacturing Company, Inc.*, CV-81-0951-RJK(Kx) (C.D. Cal., filed February 25, 1981). The Government has carefully reviewed the comments of Snyder & Dickenson Company and has concluded that the issues raised by Snyder & Dickenson Company do not warrant any modification in the proposed Final Judgment.

I. The Government is in compliance with the APPA

The Government is in compliance with the APPA, 15 U.S.C. 16 (b)-(c), which requires that certain documents pertaining to this case be published and made available to the public. On November 13, 1981 the proposed Final Judgment and Competitive Impact Statement were published in the **Federal Register**, Vol. 46, No. 219, pp. 56,069-56,073. These documents were availabe for public inspection at the Office of the Clerk of the United States District Court for the Central District of California, Los Angeles, California, and at the Department of Justice in Washington, D.C. In addition, summaries of the proposed Final Judgment and the Competitive Impact Statement were published in the *Herald Examiner* of Los Angeles and the *Washington Post* of Washington, D.C. on November 3-9, 1981. The APPA requires the Government to publish a list of, and make available to the public, "* * * any other materials or documents which the United States considered *determinative* in formulating * * *" the proposed Final Judgment. 15 U.S.C. 16(b) (emphasis supplied). No other documents or materials were determinative in formulating the proposed Final Judgment, and hence there were no documents or materials to be published in a list or to be made available to the public.

II. This is Not an Appropriate Forum for Snyder and Dickenson Company To Request That the Criminal Record Be Unsealed

Contrary to the suggestions of Snyder & Dickenson Company, the public interest does not require that entry of the proposed Final Judgment be conditioned on unsealing the record of the Government's criminal antitrust case, *United States v. Beven-Herron, Inc., et al.*, CR-81-192-MRP (C.D. Cal., filed February 25, 1981). The criminal case is separate from the civil case that would be terminated by entry of the proposed Final Judgment. The Government has already published and made available to the public those documents in this civil case that enable the public to comment on the proposed Final Judgment, namely the proposed Final Judgment and the Competitive Impact Statement. Moreover, all pleadings filed by parties in this civil case are a matter of public record and are available for inspection at the Office of the Clerk of the United States District Court for the Central District of California, Los Angeles, California.

Snyder & Dickenson Company may wish to have the record in the criminal case unsealed in order to aid its private antitrust suit, *Snyder & Dickenson Company V. Beven-Herron, Inc., and Simpson Manufacturing Co., Inc.*, CV-81-2719-MRP(JRx) (C.D. Cal., filed June 2, 1981). The appropriate procedure for unsealing the criminal record would be to apply to the District Court Judge who issued the order sealing the record. To the extent that Snyder and Dickenson Company wishes to obtain grand jury materials that are protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, a motion must be made before that same District Court Judge who was assigned to the criminal case, as required by *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211 (1979). It should be noted that the same District Court Judge who presided over the Snyder & Dickenson Company's private case.

III. The Terms of the Proposed Final Judgment Are Consistent With the Public Interest

The terms of the proposed Final Judgment are consistent with the public interest. Snyder & Dickenson Company does not claim that the restrictions that the proposed Final Judgment would impose upon the defendants are in any way contrary to the public interest. The primary purposes of the APPA's publication and comment provisions are to provide a check against possible bad faith on the part of the Government in negotiating a proposed Final Judgment and to allow for public review of the merits of the proposed Final Judgment. Snyder & Dickenson Company has not questioned the good faith of the Government in negotiating the proposed Final Judgment, nor has it suggested that the terms of the proposed Final Judgment would be ineffective in achieving its goal of remedying the violation alleged in the complaint. The Government considers the terms of the proposed Final Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the proposed Final Judment provides all or substantially all of the relief that could reasonably be expected to be obtained after a full trial. The proposed Final Judgment provides all of the injunctive relief sought in the complaint. For these reasons, the proposed Final Judgment need not be modified.

Dated: January 20, 1982.

Respectfully submitted,

Stephen S. Trott,

United States Attorney.

Kendra S. McNally,

Assistant United States Attorney, Acting Chief, Antitrust Division.

William L. Webber,

Assistant United States Attorney.

Attorneys for Plaintiff, United States of America.

In the United States District Court for the Central District of California

United States of America, Plaintiff, v. *Beven-Herron, Inc. and Simpson Manufacturing Co., Inc.*, Defendants.

CV-81-0951-RJK(kx)

Objection to Proposed Final Judgment.

The plaintiff, *Snyder & Dickenson Company* v. *Beven-Herron, Inc. and Simpson Manufacturing Co., Inc.*, Civil Action No. CV-81-2719-MRP(JRx), C.D. Calif., and the class plaintiff purports to represent, hereby object to entry of the proposed Final Judgment in the above-captioned case for the following reasons:

1. The complaint filed by Snyder & Dickenson Company is brought on behalf of a class of general contractors and/or owners of industrial and/or commercial building projects in eight counties in Southern California, and the complaint substantially tracks the allegations contained in the indictment and civil action filed by the United States of America against defendants Beven-Herron, Inc. (hereinafter "Beven-Herron") and Simpson Manufacturing Co., Inc. (hereinafter "Simpson").

2. Defendants Beven-Herron and Simpson pleaded *nolo contendere* to the indictment after considerable pretrial proceedings and shortly before trail.

3. The entire record and other pretrial proceedings in the criminal case, *United States* v. *Beven-Herron, Inc., et al.*, CR-81-192-MRP (C.D. Cal.), have been placed under seal pursuant to an order of that Court, and remain unavailable from the Court's records for inspection and copying by class plaintiffs.

4. The United States and defendants in the above-captioned action have submitted a proposed Final Judgment in that action, and, pursuant to Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon this Court's determination that it is in the public interest.

5. Because the entire record in the criminal case has been sealed (indeed even the sealing order itself is under seal), no one, especially Snyder & Dickenson and the other parties injured by defendants' antitrust violation which is the subject of this action, is in position to offer any meaningful comments respecting the proposed Final Judgment in accordance with the procedure established by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16. The Act *requires* that: (the proposed decree) and any other materials and documents which the United States considered determinative in formulating (the decree) shall * * * be made available to the public * * *

15 U.S.C. 16(b). The Act also requires that a list of such materials and documents be published in newspapers of general circulation for 7 days over a two-week period, 15 U.S.C. 16(c)(iii). Plainly, these provisions of the Act have not been even colorably complied with.

For this reason alone, the proposal Final Judgment cannot be evaluated in light of the public interest, and must be rejected unless and until the criminal record is unsealed and an appropriate opportunity to comment upon the consent judgment is afforded interested parties.

6. In addition, the proposed Final Judgment is not in the public interest because it makes no provision requiring the unsealing of the record in the criminal case and should not, under any circumstances, be accepted by the Court unless it is modified to require that the record in the criminal case be unsealed and copies of transcripts of grand jury testimony, or portions thereof, disclosed to defendants and/or their counsel in the criminal case be provided to counsel for the private class plaintiff, prior to the entry of the Final Judgment.

7. The order sealing the criminal record is an extraordinary departure from accepted and well-established practice in antitrust litigation and is contrary to the significant public interest in open criminal proceedings.

8. In addition, the order sealing the criminal record contravenes established law of the Court of Appeals for the Ninth Circuit. *Olympic Refining Co.* v. *Carter*, 332 F.2d 260 (9th Cir. 1964).

9. It is well-recognized that "[p]rivate treble-damage actions are an important component of the public interest in 'vigilant enforcement of the antitrust laws,' " *Olympic Refining Co.* v. *Carter*, 332 F.2d at 264, *quoting Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 329 (1955), and that Congress intended that injured private parties would enjoy the full benefits of the public proceedings conducted by the government in antitrust actions. *Emich Motors Corp.* v. *General Motors Corp.*, 340 U.S. 558, 568 (1951). *See* 15 U.S.C. 15(e)(2).

10. In enacting the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), Congress specifically required that entry of a consent judgment be based upon a court's determination that "such judgment is in the public interest." 15 U.S.C. 16(e). The legislative history plainly reflects Congress' intent in enacting this provision.

The Committee recognizes that the court must have broad discretion to accommodate a balancing of interests.

* * * * *

Nor is Section 2(e) intended to force the government to go to trial for the benefit of potential private plaintiffs. . . . The Committee believes that in the majority of instances the interests of private litigants can be accommodated without the risk, delay and expense of the government going to trial. For example, the court can condition approval of the consent decree on the Antitrust Division's making available information and evidence obtained by the government to potential private plaintiffs which will assist in the effective prosecution of their claims.

S. REP. NO. 93-298, 93d Cong., 2d Sess., quoted with approval in H.R. REP. NO. 93-1463, 93d Cong., 2d Sess., *reprinted in* [1974] *U.S. Code Cong. & Ad. News* 6538-39.

11. Entry of the proposed Final Judgment without requiring that it be modified to ensure that the entire court record in the criminal case be made available for inspection and copying by the class plaintiff and that copies of transcripts of grand jury testimony disclosed to defendants and/or their counsel in the criminal case be provided counsel for the class plaintiff, seriously impairs plaintiff's efforts to ensure that the class members recover any damages they may have suffered as a result of defendants' alleged violation of the antitrust laws.

12. Because defendants have pleaded *nolo contendere*, if the proposed Final Judgment is accepted and the criminal record remains sealed, class plaintiffs will have been wrongfully deprived of any benefit from the government proceeding and the public will have suffered an unwarranted disservice.

For the foregoing reasons the proposed Final Judgment should be rejected.

Dated: December 23, 1981.

Respectfully submitted,

Paul F. Cohen,

Law Offices of Paul F. Cohen, 9911 W. Pico, Suite 1000, Los Angeles, Ca 90035 (213) 203-8818.

Robert A. Seefried,

Seymour, Seefried & Hoffman, Chartered, 1010 Wisconsin Avenue, N.W., Suite 810, Washington, D.C. 20007 (202) 965-7100; Counsel for Snyder & Dickenson Co., in Civil Action No. CV-81-2719-MRP (JRx), and counsel for the purported class.

Certificate of Service

I, Lillian K. Ashley, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; thay my business address is Antitrust Division, Office of United States Attorney, Central District California, 1441A United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action:

That I am employed by the Antitrust Division at whose direction the service by mail described in this Certificate was made; that on January 20, 1982, I deposited in the United States mail, in the above-entitled action, in an envelope bearing the requisite postage, a copy of: Government's Response to Comments of Snyder & Dickenson Company and Comments of Snyder & Dickenson Company
addressed to:

H. Roy Jeppson, Webster, Jeppson, Jones & Agran, 10850 Wilshire Boulevard, Twelfth Floor, Los Angeles, California 90024;
Charles A. Legge, Stephen C. Tausz, Bronson, Bronson & McKinson, Bank of America Center, San Francisco, CA 94104.

This Certificate is executed on January 20, 1982 at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

Lillian K. Ashley.

[FR Doc. 82-2761 Filed 2-2-82; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel (Policy); 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 Theater Advisory Panel (Policy) to the National Council on the Arts will be held on February 17-18, 1982, from 9:00 a.m.-5:30 p.m., in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW, Washington, D.C. 20506.

A portion of this meeting will be open to the public on February 17, 1982, from 9:00 a.m.-3:00 p.m. to discuss FY 1982 and FY 1983 program budget.

The remaining sessions of this meeting on February 17, from 3:00-5:30 p.m. and on February 18, from 9:00 a.m.-5:30 p.m. are 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.

Dated: January 21, 1982.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 82-2726 Filed 2-2-82; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-334]

Duquesne Light Co., Ohio Edison Co., and Pennsylvania Power Co.; Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Appendices A and B Techncial Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment revises the Appendix A and Appendix B Technical Specifications to reflect the establishment of a Nuclear Division within Duquesne Light Company.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a signficant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated July 1973.

For further details with respect to this action, see (1) the application for amendment dated April 10, 1981, and supplemented June 30, August 13, September 17 and December 22, 1981, (2) Amendment No. 46 to License No. DPR-66 and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md. this 27th day of January, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-2827 Filed 2-2-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338, 50-339]

Virginia Electric and Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments No. 36 and No. 16 to Facility Operating License Nos. NPF-4 and NPF-7 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units No. 1 and No. 2 (the facility) located in Louisa County, Virginia. The amendments are effective as of the date of issuance.

The amendments revise the NA-1&2 Technical Specifications to allow an increase in enrichment for new and spent fuel from 3.7 weight percent of U-235 to 4.1 weight percent of U-235.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the application for amendments dated March 6, 1981 as supplemented March 26, 1981, and August 18, 1981 (2) Amendment No. 36 and No. 16 to Facility Operating Licenses No. NPF-4 and NPF-7 and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room,

1717 H Street, NW., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 19th Day of January, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-2828 Filed 2-2-82; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[SBLC No. 02/B-0030]

Bache Small Business Lending Corp.; Filing of Application for Eligibility Determination as a Small Business Lending Company

An Application for Eligibility Determination as a Small Business Lending Company has been filed by Bache Small Business Lending Corporation (Applicant), 100 Gold Street, New York, New York 10038, with the Small Business Administration pursuant to § 120.4(b) of SBA Regulations (13 CFR 120.4(b) (1981)), promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged solely in the making of loans to small business concerns, in participation with SBA, and in accordance with applicable SBA Regulations; and, it will be subject to supervision and examination by the SBA.

The Applicant is incorporated under the laws of the State of Delaware, and it will commence operations with an initial capitalization of $5,000,000. It intends to conduct its operations, initially in the States of New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, New Jersey, Delaware, and Pennsylvania, later expanding nationwide.

The Officers and Directors of the Applicant are:

Name and Title

William M. Marlin, Chairman and Director, 28 Cricket Club Drive, North Hills, New York

George R. Reis, President & Director, Four Paul Court, Ridgewood, New Jersey

James F. Lasser, Vice President, 119 East Hartsdale Avenue, Hartsdale, New York

James J. Rizzo, Secretary, 121 West 15th Street, New York, New York

Paul J. Hauser, Treasurer, 135 Eastern Parkway, Brooklyn, New York

Edwin F. Payne, Director, 30 Cottonwood Lane, Briarcliff Manor, New York

Bache Group Inc., 100 Gold Street, New York, New York 10038, is the parent and owner of 100 percent of the Applicant's outstanding common stock. The parent, in turn, is a wholly owned subsidary of PRUCO, Inc., and PRUCO, Inc., is a wholly owned subsidiary of The Prudential Insurance Company of America.

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and the Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, not later than February 18, 1982, submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to:

Wayne S. Foren, Director, Office of Lender Relations and Certification, Small Business Administration, 1441 L Street, NW., Room 720, Washington, D.C. 10416

A copy of this Notice shall be published in the four regional editions of the *Wall Street Journal.*

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: January 29, 1982.

Edwin T. Holloway,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 82-2807 Filed 2-2-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2023]

Mississippi; Declaration of Disaster Loan Area

Newton County in the State of Mississippi constitutes a disaster area as a result of damage caused by a tornado which occurred on January 3, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 29, 1982, and for economic injury until October 27, 1982, at:

Small Business Administration, District Office, New Federal Building, Suite 322, 100 West Capitol Street, Jackson, Mississippi 30201.

or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere	15¼%
Homeowners without credit available elsewhere	8%
Businesses with credit available elsewhere	15¾%
Businesses without credit available elsewhere	8%
Businesses (EIDL) without credit available elsewhere	8%

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

Information on recent statutory changes (Pub. L. 97-35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated January 27, 1982.

Michael Cardenas,

Administrator.

[FR Doc. 82-2808 Filed 2-2-82; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Quota for U.S. Imports of Coffee From Non-Members of the International Coffee Agreement

The International Coffee Organization (ICO) has advised that the U.S. non-member import limitation on coffee imported into the United States from non-ICO members for the period October 1, 1981-September 30, 1982, has been adjusted upward from 109,150 bags to 121,860 bags of 60 kilos each. This increase will become effective on February 10, 1982. The Commissioner of Customs has been directed to make this adjustment in the U.S. non-member limitation in accordance with U.S. obligations under the International Coffee Agreement Act of 1980.

William E. Brock,

United States Trade Representative.

[FR Doc. 82-2739 Filed 2-2-82; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[TMK-2-CO:R:E:E]

Application for Recordation of Trade Name; Bristol-Myers Company

Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Bristol-Myers Company," used by Bristol-Myers Company, a corporation organized under the laws of the State of Delaware, located at 345 Park Avenue, New York, New York 10154.

The application states that the trade name is used in connection with the following merchandise manufactured in numerous foreign countries: pharmaceuticals and medicines for human and veterinary use; vitamins, deodorants and oral hygiene preparations for human use; cosmetics and toiletries; medical appliances; small electrical appliances; and nutritional foods. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Washington, D.C. 20229, in time to be received no later than April 5, 1982.

Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

Dated: January 28, 1982.

Donald W. Lewis,

Director, Entry, Procedures and Penalties Division.

[FR Doc. 82-2763 Filed 2-2-82; 8:45 am]

BILLING CODE 4820-02-M

[TMK-2-CO:R:E:E]

Application for Recordation of Trade Name; Clairol Incorporated

Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Clairol Incorporated," used by Clairol Incorporated, a corporation organized under the laws of the State of Delaware, located at 345 Park Avenue, New York, New York 10154.

The application states that the trade name is used in connection with the following merchandise which is manufacturered in numerous foreign countries: hair coloring, hair care products, electrical applicances, cosmetics and toiletries. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person, in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Washington, D.C. 20229, in time to be received no later than April 5, 1982.

Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

Dated: January 28, 1982.

Donald W. Lewis,

Director, Entry, Procedures and Penalties Division.

[FR Doc. 82-2764 Filed 2-2-82; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

[Dept. Circular, Public Debt Series—No. 2-82]

Treasury Notes of February 15, 1985, Series L-1985

January 28, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the Authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $5,000,000,000 of United States securities, designated Treasury Notes of February 15, 1985, Series L-1985 (CUSIP No. 912827 MV 1). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated February 16, 1982, and will bear interest from that date, payable on a semiannual basis on August 15, 1982, and each subsequent 6 months on February 15 and August 15 until the principal becomes payable. They will mature February 15, 1985, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Tuesday, February 2, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 1, 1982.

3.2. Each tender must state the face amounts of securities bid for. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g.,

7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hours, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accpeted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitted noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressely reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Tuesday, February 16, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individuals's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash ajustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form when such securities are available, at any Federal Bank of Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested

form or registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-2800 Filed 2-1-82; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular Public Debt Series—No. 3-82]

Treasury Notes of February 15, 1992; Series A-1992

January 28, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of United States securities, designated Treasury Notes of February 15, 1992, Series A-1992 (CUSIP No. 912827 MW 9). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated February 16, 1982, and will bear interest from that date, payable on a semiannual basis on August 15, 1982, and each subsequent 6 months on February 15 and August 15 until the principal becomes payable. They will mature February 15, 1992, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, February 3, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 2, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.750. That a rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations

will be carried to three decimial places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would be absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for alloted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Tuesday, February 16, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount or up to 5 percent of the face amount of securities alloted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registerations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delviery of new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-2803 Filed 2-1-82; 8:45 am]

BILLING CODE 4810-40-M

[Dept. Circular Public Debt Series—No. 4-82]

14% Treasury Bonds of 2006-2011

January 28, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of United States securities, designated 14% Treasury Bonds of 2006-2011 (CUSIP No. 912810 CY 2). The securities will be sold at auction, with bidding on the basis of price. Payment will be required at the bid price of each accepted tender in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be issued February 16, 1982, and are offered as an additional amount of 14% Treasury Bonds of 2006-2011 (CUSIP No. 912810 CY 2) dated November 16, 1981. Payment for the securities will be calculated on the basis of the auction price determined in accordance with this circular, plus accrued interest from November 16, 1981, to February 16, 1982. Interest on the securities offered as an

additional issue is payable on a semiannual basis on May 15, 1982, and each subsequent 6 months on November 15 and May 15, until the principal becomes payable. They will mature November 15, 2011, but may be redeemed at the option of the United States on and after November 15, 2006, in whole or in part, at par and accrued interest on any interst payment date or dates, on 4 months' notice of call given in such manner as the Secretary of the Treasury shall prescribe. In case of partial call, the securities to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. Interest on the securities called for redemption shall cease on the date of redemption specified in the notice of call. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Thursday, February 4, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 3, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the price offered, expressed on the basis of 100 with two decimals, e.g., 100.00. Common fractions may not be used. Only tenders at a price more than the original issue discount limit of 92.75 will be accepted. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified price. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and price range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the highest prices, through successively lower prices to the extent required to attain the amount offered. Tenders at the lowest accepted price will be prorated if necessary. Successful competitive bidders will be required to pay the price that they bid. Those submitting noncompetitive tenders will pay the weighted average price in two decimals of accepted competitive tenders. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the price. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the weighted average price of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from November 16, 1981, to February 16, 1982, in the amount of $35.58011 per $1,000 of securities allotted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Tuesday, February 16, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount

will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appeared in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-2804 Filed 2-1-82; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 23
Wednesday, February 3, 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).

CONTENTS

	Items
Civil Aeronautics Board	1–4
Federal Communications Commission	5–7
Federal Crop Insurance Corporation	8
Federal Deposit Insurance Corporation	9, 10
Federal Maritime Commission	11
Federal Reserve System	12
Postal Service	13

1

CIVIL AERONAUTICS BOARD

[M–341, Amdt. 5]

Addition and closure of item to the January 29, 1982 Board Meeting

TIME AND DATE: 10 a.m. (after open meeting) January 29, 1982.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 41. Board Discussion of fiscal year 1983 Budget.

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–161–82 Filed 2–1–82; 3:54 pm]

BILLING CODE 6320–01–M

2

CIVIL AERONAUTICS BOARD

[M–341, Amdt. 6]

Addition and closure of item to the January 29, 1982 Board meeting

TIME AND DATE: 10 a.m. (after open meeting) January 29, 1982.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 42. Report on Negotiations with Brazil. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–162–82 Filed 2–1–82; 3:55 pm]

BILLING CODE 6320–01–M

3

CIVIL AERONAUTICS BOARD

[M–341, Amdt. 8]

Deletion from the January 29, 1982 Board meeting

TIME AND DATE: 10 a.m., January 29, 1982.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 8. Docket 39550, Application of People Express Airlines, Inc. for exemption. Petition of American Airlines for reconsideration and reversal of staff action in Order 81–6–41 granting People Express exemptions for Parts 221 and 250 of the Board's Economic Regulations. (Memo 1028, BDA.)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

SUPPLEMENTARY INFORMATION: The Board's staff has requested that Item 8 be withdrawn from the January 29, 1982 agenda. The item concerns the petition for review of staff action filed by American Airlines and other carriers in response to the Bureau's granting People Express Airlines exemptions from the Board's oversales and baggage liability rules (Order 81–6–41). It is necessary to delete Item 8 because the staff desires to provide the Board additional information and further staff work is required. Accordingly, the following Members voted that Item 8 be deleted from the January 29, 1982 agenda and that no earlier announcement of this deletion was possible:

Chairman Dan McKinnon
Vice Chairman Elizabeth E. Bailey
Member Gloria Schaffer
Member George A. Dalley
Member James R. Smith

[S–163–82 Filed 2–1–82; 3:56 pm]

BILLING CODE 6320–01–M

4

CIVIL AERONAUTICS BOARD

[M–341, Amdt. 7]

Deletion from the January 29, 1982 Board Meeting

TIME AND DATE: 10 a.m., January 29, 1982.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 25. Revised Cost Sharing Report. (Memo 1049, BDA, OGC, and OEA.)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673–5068.

SUPPLEMENTARY INFORMATION: It is necessary to delete Item 25 from the January 29, 1982 agenda since the Board Members need additional time to review the staff's recommendations. Accordingly, the following Members voted that Item 25 be deleted from the January 29, 1982 agenda and that no earlier announcement was possible:

Chairman Dan McKinnon
Vice Chairman Elizabeth E. Bailey
Member Gloria Schaffer
Member George A. Dalley
Member James R. Smith

[S–164–82 Filed 2–1–82; 3:56 pm]

BILLING CODE 6320–01–M

5

FEDERAL COMMUNICATIONS COMMISSION

Open Commission meeting, Thursday, January 28, 1982

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 28, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Radio Technical Commission for Aeronautics (RTCA). *Summary:* The Commission Participates in the RTCA with other government agencies. However, the current austere budget requires program reductions. The Private Radio Bureau has proposed cancelling the FCC membership in the RTCA.

General—2—*Title:* Responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices. Potential effects of a reduction in the allowable level of radiofrequency radiation on FCC authorized communication services and equipment (Docket 79–144). Summary: It is proposed to amend § 1.1305 of the Commission's Rules implementing the National Environmental Policy Act. Would expand the list of "major actions" subject to environmental processing standards to include equipment or operations not in compliance with federal health and safety standards for radiofrequency or microwave radiation.

General—3—*Title:* Report of the United States Delegation to the Regional Adminsitrative 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.

Private Radio—1—*Title:* Reinstatement of expired Club and Military Recreation station licenses. *Summary:* The Commission will consider whether the staff should reinstate certain expired amateur radio licenses.

Private Radio—2—*Title:* Petition for Reconsideration of Commission's action of October 1, 1981, relating to Amateur station identification requirements. *Summary:* The Commission will consider whether to grant or deny the Petition for Reconsideration.

Private Radio—3—*Title:* Amendment of Section 90.61 of the Commission's Rules concerning general eligibility in the Industrial Radio Services. *Summary:* The FCC will consider whether to adopt a rule amendment to permit the licensing of non-profit corporations and associations of eligible users in the Business and Special Industrial Radio Services in the bands below 512 MHz.

Common Carrier—1—American Telephone & Telegraph Company *et al.* For Authority Under Section 214 of the Communications Act to Construct and Operate a Submarine Cable System (Third Florida-St. Thomas Cable) Between the Continental United States and St. Thomas, U.S. Virgin Islands (I-P-C-81-050). We are considering the aforementioned joint application for authority pursuant to Section 214 of the Communications Act of 1934 as amended to participate in the construction and operation of an approximately 3,000 circuit submarine cable (SG type—3,150 4 kHz circuits) between Florida and St. Thomas, U.S. Virgin Islands. Of the 3,000 circuits, the joint applicants intend to place 1,901 in service initially to be used solely for international service.

Common Carrier—2—*Title:* Application by AT&T, ITTCIVI, ITT Worldcom, RCA Globcom, TRT, and WUI (joint applicants) for a cable landing license to land and operate a submarine cable between Florida and St. Thomas, U.S. Virgin Islands. *Summary:* The joint applicants request a license pursuant to the provisions of 47 U.S.C. 34-39 to land and operate a submarine cable between Florida and St. Thomas, U.S. Virgin Islands.

Common Carrier—3—*Title:* American Telephone and Telegraph Company Restrictions on Resale and Sharing of Private Line Services to Form Equivalents of Message Telecommunications Service and Wide Area Tele-Communications Service. *Summary:* The Commission will decide wheter to investigate the lawfulness of certain provisions in the American Telephone and Telegraph Company's private line tariffs which forbid the use of private line services in such a manner as to form services which are the equivalents of Message Telecommunications Service and Wide Area Telecommunications Service.

Common Carrier—4—*Title:* CC Docket No. 81-351, investigation of proposed revisions to AT&T's Series 7000 terrestrial television service offering. *Summary:* In Feb. 1981, AT&T proposed revisions to its Series 7000 terrestrial television transmission service offering. By order adopted in May 1981, the Commission suspended the revisions and set various issues for investigation (86 FCC 2d 861). These issues include the reasonableness of the proposed rate structure. During the investigation AT&T submitted an alternative rate structure and various parties filed comments. The Commission will consider the reasonableness of the proposed revisions based on the issues and comments in the investigation.

Common Carrier—5—*Title:* In the Matter of the Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended, for: General Telephone Company of Florida, General Telephone Company of Indiana, Incorporated, General Telephone Company of Michigan, General Telephone Company of Ohio. *Summary:* The Commission is considering prescription of depreciation rates for new additions to the outside plant accounts of the GTE companies of Florida, Indiana, Michigan and Ohio using the equal life group method of calculating such rates.

Common Carrier—6—*Title:* RCA American Communications Revisions to Tariff FCC Nos. 1 and 2 Transmittal Nos. 323 and 328. *Summary:* The Commission considers petitions to reject or alternatively suspend and investigate tariff revisions filed by RCA Americom, Inc. proposing to establish a competitive bidding procedure for assigning transponders.

Common Carrier—7—*Title:* In the Matter of Domestic Satellite Transponder Sales. *Summary:* The Commission considers proposals of domestic satellite space station licensees to sell transponders to user rather than leasing them pursuant to tariff.

Common Carrier—8—*Title:* In the Matter of Satellite Common Carriers' Transponder Assignment Procedures. *Summary:* The Commission considers the petition of RCA American Communications Inc. requesting the Commission to direct all satellite common carriers to tariff their procedures for assigning transponders to customers or to remove such requirements from RCA Americom.

Cable Television—1—Amendment of Part 0 of the Commission's Rules and Regulations Concerning Delegations of Authority to the Chief, Cable Television Bureau. The Commission will consider modifying its delegation of authority to the Chief of the Cable Television Bureau, pursuant to Section 0.288 of the Commission's Rules, in regard to the imposition of forfeitures on cable television system operators and Cable Television Relay Service (CARS) station licensees.

Cable Television—2—*Title:* Petitions for special relief filed by Stations WBRE-TV and WDAU-TV to be found significantly viewed in certain communities located in Pennsylvania. *Summary:* Requests for declaratory rulings filed by Stations WBRE-TV and WDAU-TV, CSR-1764 and 1819, respectively, to be found significantly viewed in certain communities in Pennsylvania.

Cable Television—3—"Petition for Reconsideration" (CAR-14997-01) and Petitions for Orders to Show Cause (CSC-242, -243) filed March 4, 6, and 13, 1981, by American Cable Television, Inc. American Cable Television, Inc., operator and franchisee of several Arizona cable systems, seeks reconsideration of the grant of a construction permit for a new CARS Station WGZ-233 to Mesa Community Cable TV, Inc. American also seeks issuance of orders to show cause against Mesa for alleged violations of the Commission's Rules.

Cable Television—4—Petitions for Issuance of Tax Certificates (CSR-1843, CSR-1945) filed November 26, 1980, and May 15, 1981, by Kansas State Network, Inc. Kansas State Network, Inc., licensee of several television broadcast stations, seeks tax certificates, pursuant to Section 1071 of the 1954 Internal Revenue Code, for divestitures of its cable television interests.

Complaints and Compliance—1—*Title:* Application for Review of the Broadcast Bureau's ruling of March 31, 1981, filed by Minnesota Farmers Union on June 29, 1981. *Summary:* The Commission will consider whether to affirm the Bureau ruling which denied the complaint of the Minnesota Farmers Union ("Union") against Hubbard Broadcasting, Inc., licensee of KSTP-TV, St. Paul, Minnesota. The Bureau ruled that the licensee was not unreasonable in determining that the Union's use of a tax-exempt educational fund did not constitute a controversial issue of public importance within its service area. The Bureau declined to rule upon the Union's allegations of news distortion, in the absence of extrinsic evidence.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: January 21, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-157-82 Filed 2-1-82; 3:16 pm]

BILLING CODE 6712-01-M

6

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From January 28th Open Meeting

The following items have been deleted at the request of the Office of Commissioner Dawson 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., and Subject

Common Carrier—1—*Title:* American Telephone & Telegraph Company *et al.* For Authority Under Section 214 of the Communications Act to Construct and Operate a Submarine Cable System (Third Florida-St. Thomas Cable) Between the Continental United States and St. Thomas, U.S. Virgin Islands. (I–P–C–81–050) *Summary:* We are considering the aforementioned joint application for authority pursuant to Section 214 of the Communications Act of 1934 as amended to participate in the construction and operation of an approximately 3,000 circuit submarine cable (SG type—3,150 4 kHz circuits) between Florida and St. Thomas, U.S. Virgin Islands. Of the 3,000 circuits, the joint applicants intend to place 1,901 in service initially to be used solely for international service.

Common Carrier—2—*Title:* Application by AT&T, ITTCIVI, ITT Worldcom, RCA Globcom, TRT, and WUI (joint applicants) for a cable landing license to land and operate a submarine cable between Florida and St. Thomas, U.S. Virgin Islands. *Summary:* The joint applicants request a license pursuant to the provisions of 47 U.S.C. §§ 34–39 to land and operate a submarine cable between Florida and St. Thomas, U.S. Virgin Islands.

Deletion of Agenda Item From January 28th Closed Meeting

The following item has been deleted at the request of the Office of the Chairman from the list of agenda items scheduled for consideration at the January 28, 1982 Closed Meeting and previously listed in the Commission's Notice of January 21, 1982.

Agenda, Item No., and Subject

Hearing—2—Applications for Review in the Gulf Coast Communications, Inc., Tampa, Florida Public Coast III–B Maritime Mobile Radio proceeding. (PR Docket Nos. 78–259–60)

Issued: January 27, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–158–82 Filed 2–1–82; 3:16 pm]

BILLING CODE 6712–01–M

7

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., and 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–159–82 Filed 2–1–82; 3:16 pm]

BILLING CODE 6712–01–M

8

FEDERAL CROP INSURANCE CORPORATION

[NOM–82–2]

TIME AND DATE: 9 a.m., Wednesday, February 3–4, 1982.

PLACE: Room 201–W, Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Sales and Service Agreements.
2. Appeal Process.
3. Approval of Counties for Insurance.
4. Amendments to Oat, Flax, Barley, Wheat, Rye, and Combined Crop Insurance policies—Fire provision.

CONTACT PERSON FOR MORE INFORMATION: Peter F. Cole, Secretary, 202–447–3325.

Dated: January 26, 1982.

Federal Crop Insurance Corporation.

Peter F. Cole,

Secretary.

[S–153–82 Filed 2–1–82; 10:10 am]

BILLING CODE 3410–08–M

9

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, February 8, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Grand Canyon State Bank, a proposed new bank, to be located at the southeast corner of Gilbert and Guadalupe Roads, Gilbert, Arizona.

Bitterroot Valley Bank, a proposed new bank, to be located in the Lolo Shopping Center, Lolo, Montana.

Application for consent to merge and establish two branches:

Liberty State Bank of DeKalb County, Liberty, Tennessee, for consent to merge, under its charter and with the title "Liberty State Bank," with First National Bank of Lebanon, Lebanon, Tennessee, and to establish the two offices of First National Bank of Lebanon as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,959–L—Guaranty Bank & Trust Company, Chicago, Illinois; Gateway National Bank of Chicago, Chicago, Illinois

Case No. 45,069–L—Franklin National Bank, New York, New York

Memorandum and Resolution re: North Point State Bank, Arlington Heights, Illinois

Memorandum and Resolution re: First National Bank of Carrington, Carrington, North Dakota

Memorandum and Resolution re: American Bank & Trust Orangeburg, South Carolina

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Colorado, Martinez & Odell, Hato Rey, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Personnel Management:

Quarterly Summary of Personnel Activities for the period October 1, 1981 through December 31, 1981.

Discussion Agenda:

Memorandum and Resolution re: Procedures for the disposition of securities acquired by

the Corporation in its receivership capacity.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW, Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: February 1, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–154–82 Filed 2–1–82; 11:40 am]

BILLING CODE 6714–01–M

10

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, February 8, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Requests for relief from adjustment for violations of Regulation Z:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to merge and establish two branches:

Syracuse Savings Bank, Syracuse, New York, for consent to merge, under its charter and title, with Dime Federal Savings and Loan Association, Cortland, New York, and to establish the two offices of Dime Federal Savings and Loan Association as branches of the resultant bank.

Reports of committees and officers:

Report of the Director, Division of Research and Strategic Planning, re: 1981 Earnings of Large Mutual Savings Banks Based on FDIC Surveys.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: February 1, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–155–82 Filed 2–1–82; 11:41 am]

BILLING CODE 6714–01–M

11

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., February 10, 1982.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Puerto Rico Maritime Shipping Authority 13 percent general rate increase between ports in Puerto Rico and ports in Canada via Elizabeth, New Jersey, U.S. Atlantic and Gulf ports and ports in Puerto Rico and the U.S. Virgin Islands and ports in Puerto Rico and ports in the U.S. Virgin Islands.

2. Agreements Nos. 7100–26, 7670–22, 7770–22 and 9214–28: Modifications of four North Atlantic/European Conferences' Agreements to include rate-making authority for the consolidation of cargo.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S–156–82 Filed 2–1–82; 3:06 pm]

BILLING CODE 6730–01–M

12

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Monday, February 8, 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 29, 1982.

James McAfee,

Assistant Secretary of the Board.

[S–152–82 Filed 1–29–82; 4:03 pm]

BILLING CODE 6210–01–M

13

POSTAL SERVICE

Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 2 p.m. on Monday, February 8, in Washington, D.C., and at 9 a.m., February 9, 1982 in the Benjamin Franklin Room, 11th Floor, 475 L'Enfant Plaza SW., Washington, D.C. The Tuesday meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On January 6, 1982, the Board of Governors of the United States Postal Service voted to close to public observation its meeting of February 8, 1982, which is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, Hughes, Jenkins and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Secretary of the Board Cox; and Counsel to the Governors Califano. The portion involving planning

will also be attended by Assistant Postmaster General Cummings.

A portion of the meeting to be closed will consist of a discussion among the members of compensation for certain postal executives.

A second portion of the meeting to be closed will consist of a discussion of Postal Service strategic planning.

Agenda

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.
(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Quarterly Report on Financial Performance.
(Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the quarterly summary of financial performance.)
4. Quarterly Report on Service Performance.
(Mr. Jellison, Senior Assistant Postmaster General, Operations Group, will present the quarterly summary of service performance.)
5. Report on Administration Group Programs.
(Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will provide a report on certain programs of the Administration Group.)
6. Mandate of the Court of Appeals in *Newsweek, et al.* v. *U.S. Postal Service.*
(The U.S. Court of Appeals for the Second Circuit, in the litigation arising out of the March 10, 1981, Decision of the Governors on Rates of Postage and Fees for Postal Services (Rate Commission's Docket No. R80–1), remanded the action to the Board of Governors for further consideration in accordance with the November 2, 1981, opinion of the Court. The Court's mandate was received on January 21, 1982. The Governors will consider the matter in accordance with the mandate and in the light of related litigation currently pending in the Court.)
7. Capital Investment Project: Procurement of Spotter Tractors and Semi-Trailers.
The Board will consider approval of an investment for the purchase of 105 spotter tractors and 758 semi-trailers, these being among the Postal Service's fiscal '81–'82 vehicle requirements for which the Board, in October 1980, approved solicitation of bids in the understanding that management would request Board authorization of the necessary capital investment after receipt of bids but before contract award.)
8. Appointment of Committee Chairmen.
(The Chairman will appoint Chairmen of the Board Committees for the year 1982.)
9. Extended Life Insurance Coverage.
(In furtherance of earlier discussions of executive compensation, the Board will discuss the possible extension of life insurance coverage for officers of the Postal Service.)

Louis A. Cox,

Secretary.

[S–160–82 Filed 2–1–82; 3:23 pm]

BILLING CODE 7710–12–M

federal register

Wednesday
February 3, 1982

Part II

Department of the Interior

Bureau of Land Management

Wilderness Study Policy; Policies, Criteria and Guidelines for Conducting Wilderness Studies on Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Wilderness Study Policy; Policies, Criteria and Guidelines for Conducting Wilderness Studies on the Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final wilderness study policy.

SUMMARY: This document gives notice of the availability of the Final Wilderness Study Policy which describes the policies, criteria and guidelines of the Bureau of Land Management for conducting wilderness studies on the public lands as mandated by the Federal Land Policy and Management Act of 1976 on the approximately 24 million acres of public lands identified as wilderness study areas. Wilderness studies will be conducted in accordance with the Bureau of Land Management planning regulations which are designed to ensure that actions on the public lands are based upon the best available information and sound resource management planning. The findings of each wilderness study, including public participation, are used in determining whether these study areas are recommended as suitable or nonsuitable for designation as wilderness by Congress.

DATE: Effective on February 3, 1982.

ADDRESS: Comments or suggestioms should be sent to: Director (342), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James R. Edward, Division of Recreation, Wilderness and Cultural Resources, (202) 343–6064. Requests for copies of this document should be addressed to: James R. Edward, Division of Recreation, Cultural and Wilderness Resources (342), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240. Copies will also be available from Bureau of Land Management State Directors in the Western States.

SUPPLEMENTARY INFORMATION: *The Draft Wilderness Study Policy* was published in the **Federal Register** on December 19, 1980 (45 FR 83780) for public review and comment. The official public comment period closed on April 2, 1981. Approximately 300 comments were received representing individuals, interest groups, industry and government. The purpose of the following summary is to present an overview of comments received on the draft and a brief explanation of their role in the development of the final Wilderness Study Policy. This summary is followed by an explanation of additional changes made between the Draft and Final study policies.

1. Summary of Public Comments Received on the Draft Wilderness Study Policy

A. *General:* Overall, the draft Policy was generally supported. The findings of the comment analysis did indicate that several specific issues were in need of further clarification and certain provisions in the Draft were found to be unacceptable to some respondents. The Final Study Policy was developed to be as responsive to the public comments as possible while still remaining consistent with Bureau of Land Management (BLM) and Department of the Interior policies. The following summarizes the findings of the comment analysis.

B. *Use of the Planning System and EIS's:* The public response showed wide support for conducting wilderness studies within the BLM planning system. Although some respondents expressed concern over the possibility of the system becoming stagnant or cumbersome, most believed conducting studies within the planning process would ensure fair consideration of affected resources. Wide support was also shown for use of environmental impact statement (EIS's) for all wilderness studies.

C. *Program Policy Statement:* In the draft program policy statement, many of the respondents expressed concern over use of the phrase "in perpetuity." Some felt it was an overly restrictive requirement while others felt it precluded Congress from removing an area's wilderness designation status. The Final Study Policy deletes the "in perpetuity" language from both the program policy statement and the manageability criterion. Overall, few comments were received on the program policy statement.

Wilderness Planning Criteria

D. *Criterion No. 1:* Respondents also showed little support for the mandatory requirements of resource benefits and manageability found in proposed Criterion #1. The "sufficent to offset" language used in proposed benefits criterion was often misinterpreted. After reviewing the comments recieved, it was determined that benefits would not be utilized as a specific criterion. Instead, the final policy clarifies that resource benefits are assessed through the BLM's general multiple use planning process. Manageability is retained as a study criterion but is explained in greater detail in response to requests to clarify specific types of manageability considerations allowed in wilderness studies.

E. *Criterion No. 2:* Of the nine proposed study criteria, only one was not acceptable to most respondents. A broad cross section of interests expressed concern over proposed Criterion No. 2: Public Comment. In light of the points raised through the public response, the requirement for "special consideration" of local publics has been modified. However, the needs of local publics will still be addressed in the quality standards for public comment, consistency with State and local plans, and consideration of local social and economic effects.

F. *Criteria Nos. 3 and 5:* Few comments were received on Criterion No. 3, Social and Economic Effects and Criterion No. 5, Consistency with Other Plans. However, it was determined that consideration of both of these factors is a requirement of the BLM planning system. Therefore, these requirements are retained as quality standards to be met in wilderness studies.

G. *Criteria Nos. 4, 6 and 7:* A wide range of comments was received on proposed Criterion No. 4: Energy and Critical Mineral Resources and Criterion No. 6: Impacts on Other Resources. While some suggested these criteria be given more weight, others suggested no additional emphasis should be placed on these considerations. After examination of the comments and related policies, it was determined that both issues still need to be examined carefully during the wilderness study process. The BLM planning process requires a consideration of resources and an assessment of impacts to their use and management. Therefore, energy and critical mineral resources and impacts on other resources are retained as quality standards for analysis and documentation in wilderness EIS's or environmental assessments (EA) and wilderness study reports. Additionally, impacts on wilderness addressed through Criterion No. 7 in the Draft, will receive scrutiny through the use of a quality standard requiring an examination of the Effects of Nondesignation on Wilderness Values.

H. *Criterion No. 8:* Public comments received on proposed Criterion No. 8: Evaluation of Wilderness Values revealed a need for further clarification on the use of the criterion. Based on the comments received, the criterion has been retained and further guidance on its use (particulary consideration of outside sights and sounds) is provided in the final study policy.

I. *Criterion No. 9:* Several criticisms were received on the use of proposed Criterion No. 9: Diversity in the National Wilderness Preservation System. Questions were raised as to the weight this criterion would be given in decisionmaking. Additionally, some of the specific application guidance was questioned. It was determined that the contribution of an area to diversity in the National Wilderness Preservation System is a valid factor for consideration. It was also decided that rather than employing it as a separate study criterion, it would be more appropriate to consider diversity as an integral part of the overall evaluation of the wilderness values of an area (Criterion No. 8). Additional guidance and clarification on the application of this factor is provided in the final policy.

J. *Other Issues:* Comments were also received on other policy issues included in the Draft Policy. One of these was the use of a minerals rating system. Several respondents requested use of a minerals rating system during studies to evaluate the favorability of WSA's for energy and mineral resources. The BLM is in the process of developing an energy and minerals rating system which may be utilized in future wilderness studies. The proposed minerals rating system was published in the **Federal Register** on December 10, 1981, for public review and comment.

The Final Wilderness Study Policy addresses most of the other issues raised in the public response. The preceding summary has been included to display how the key comments received were utilized in development of the Final Wilderness Study Policy.

A detailed report of the analysis of public comment received on the Draft Wilderness Study is available for review in the BLM State Offices and the Washington Office (342). A limited number of copies are available by request only to the BLM's Washington Office (342).

2. Additional Changes Between the Draft and Final Study Policy

A. *General:* In addition to the changes outlined above which resulted from public comments on the draft, there are some other major changes which have been made in the final study policy as well. These modifications are based upon input from BLM field staff, new policy direction received from the Administration, and external policy and budget decisions which have had an impact on the BLM wilderness program. These changes and the rationale for such changes are summarized below.

B. *Comparisons between WSA's:* Some of the BLM field staff felt that the study policy should explicitly allow for the use of comparisons between WSA's. Although comparisons were not permitted during the inventory process, the general sentiment was that comparisons are a valid and useful tool that should be allowed during wilderness study. While the new provision in the final policy does provide the flexibility to conduct comparisons between WSA's, it also requires a documentation of the rationale for their use and an explanation of the methodology used in making the comparisons.

C. *Wilderness Manageability:* Field staff also commented that there was a need for further clarification on the application of the wilderness manageability criterion. As a result, the manageability section was reorganized to improve readability. A provision was also added to the study policy explicity stating that it is not the policy of the BLM to create protective buffer zones around wilderness areas and that the use of such buffer zones would not be considered when analyzing an area's manageability as wilderness.

D. *Wilderness Planning Criteria and Quality Standards:* Since the time the draft study policy was prepared, additional BLM guidance on the development of planning criteria was issued by the BLM's Office of Planning, Inventory, and Environmental Coordination. It became clear after reviewing the new guidance, and in keeping with the Administration's policy to avoid unnecessary and burdensome regulations, that some of the wilderness planning criteria contained in the draft study policy was redundant and repetitious of requirements already covered by the BLM planning regulations. Most of the considerations addressed in the nine draft wilderness criteria would be covered in BLM planning efforts even if they were not required through specific wilderness criteria. As a result, the BLM has narrowed down the number of wilderness planning criteria from nine to two. The two remaining wilderness criteria are (1) Evaluation of Wilderness Values (including diversity) and (2) Manageability. The former proposed criteria will still be considered in wilderness EIS's or EA's and wilderness study reports as quality standards for analysis and documentation. The use of quality standards will foster consistency in documenting the rationale for wilderness recommendations and ensure that other resource considerations are being adequately addressed in wilderness studies.

E. *Delegation of authority for Draft Wilderness EIS's:* In order to expedite the overall wilderness study process, the BLM's State Directors have been given the authority to approve and file Draft Wilderness EIS's containing their preliminary wilderness recommendations. This authority formerly rested with the Assistant Secretary for Land and Water Resources. The changes resulting from this delegation are reflected primarily in the sections on the reporting process and decision roles and responsibilities. The Department will continue to file all final wilderness EIS's and the Secretary will still be the responsible official for making the Department of the Interior's final wilderness recommendations to the President.

F. *Requests for GS/BM Mineral Surveys:* An additional modification affecting the reporting process is that the Geological Survey (GS)/Bureau of Mines (BM) mineral surveys will be requested by the Director only after reviewing Preliminary Final Wilderness EIS's and concurring with the State Director's suitable wilderness recommendations. Requesting the mineral surveys when the BLM is relatively certain of its recommendations as to an area's suitability or nonsuitability should result in considerable cost savings. However, the corresponding time lag of 3–4 years before receiving the GS/BM mineral survey report requires the BLM to report the nonsuitable recommendations separately in advance of the suitables covered in the same wilderness study.

G. *Accelerated Separate Reporting of Nonsuitable Recommendations:* A policy decision aimed at expediting the BLM wilderness review is to report nonsuitable wilderness recommendations separately to the President to avoid delays resulting from the time needed by the GS and BM to conduct the mineral surveys required for areas recommended as suitable. These changes are reflected in the section on the reporting process. Periodic reports for suitable areas will be forwarded for processing as well.

H. *Geology-Energy-Minerals Resource Assessment:* A related policy and procedural change is that the BLM will be conducting its own detailed Geology-Energy-Minerals (GEM) resource assessment as part of the wilderness study and planning process. The GEM assessment will enable the BLM to make resource allocation decisions and wilderness recommendations based on reliable data and analysis with respect to energy and mineral resources present in WSA's. As a result, BLM wilderness recommendations, both suitable and

nonsuitable, will have the benefit of reliable energy and minerals information and analysis. Having this information early in the study process should minimize uncertainty and avoid unnecessary requests for GS/BM mineral surveys. However, GS/BM mineral surveys will still be required for all areas recommended as suitable for wilderness designation.

I. *EIS Requirements for Wilderness Studies:* The draft policy stated that "*all* wilderness recommendations must be covered by an EIS since a wilderness designation constitutes a major Federal action significantly affecting the human environment." However, after the draft study policy was released, the Department of the Interior received a letter from the Council on Environmental Quality (CEQ) which stated that an EIS would be necessary only in those cases where it has been determined that the wilderness proposal is a major Federal action significantly affecting the human environment. Environmental Assessments must still be conducted to determine whether to prepare an EIS and to aid in resource analysis. This change has been incorporated into the final study policy where appropriate.

Dated: January 13, 1982.

Robert F. Burford,

Director.

Final Wilderness Study Policy

Table of Contents

Chapter I. *Introduction*
A. Purpose
B. The Wilderness Review Process
Chapter II. *The Wilderness Study Process*
A. Wilderness Studies in the BLM Planning System
B. Wilderness Program Policy
C. Wilderness Study Policy and Planning Criteria
D. Quality Standards for Analysis and Documentation
E. Guidelines for Applying the Planning Criteria
F. Guidelines for Satisfying the Quality Standards
Chapter III. *Relationship to the BLM Planning System*
A. Relationship to BLM Planning Regulations
B. Scope and Scheduling
C. Documentation
D. Reporting Process
E. Decision Roles and Responsibilities
F. Role of Mineral Survey Reports
G. Joint Studies
H. Formulation of Alternatives
Chapter IV. *Public Involvement*
A. General
B. State and Local Governments

Appendices

A. Section 603 of the Federal Land Policy and Management Act
B. Excerpts from The Wilderness Act
C. Glossary

Chapter I. Introduction

The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to review areas of the public lands determined to have wilderness characteristics, and to report to the President his recommendations as to the suitability or nonsuitability of each such area for preservation as wilderness. The Secretary is required to report his recommendations to the President by October 21, 1991, and the President is required to report his recommendations to Congress by October 21, 1993.

A. Purpose

The purpose of this document is to describe the policies, criteria and guidelines of the Bureau of Land Management (BLM) for conducting wilderness studies on the public lands as required by FLPMA. These wilderness studies will be conducted in accordance with the BLM planning regulations (43 CFR Part 1601), which establish the basic process for multiple use planning decisions on the public lands. The planning regulations provide for the issuance of national policy and procedural guidance when appropriate for particular resource planning efforts.

This national guidance for BLM wilderness studies is intended to achieve three purposes: (1) To ensure that wilderness recommendations resulting from multiple-use plans are based on consideration of the multiple resource values of the public lands, (2) to ensure that recommendations resulting from wilderness studies are consistent with established national policy, and (3) to provide effective opportunities for interested and affected members of the public and State and local governments to participate in wilderness studies.

A draft of this document was published in the **Federal Register** on December 19, 1980, for public review and comment in order to provide the public with an opportunity to participate in the development of the final policies and procedures that will guide BLM wilderness studies. The public comment period on the draft closed on April 2, 1981, and was followed by a public comment analysis. Copies of the analysis report may be obtained by request from the Director (342).

B. The Wilderness Review Process

The BLM wilderness review program stems from Section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA). The FLPMA requires BLM to prepare an inventory of the public lands and their resources, including an identification of areas having wilderness characteristics. Management decisions for the public lands are to be made through a resource management planning process that considers potential uses of each land area. The public lands are to be managed so as to prevent unnecessary or undue degradation of the lands.

To carry out the wilderness mandate of FLPMA, the Bureau of Land Management has developed a wilderness review process with three phases: inventory, study, and reporting to Congress.

Inventory: In the wilderness inventory, the BLM examined the public lands, with public participation, and identified those areas that should meet the definition of wilderness established by Congress. These areas were identified as wilderness study areas (WSA's). The inventory was completed by November 14, 1980, in the contiguous Western States, resulting in the identification of approximately 24 million acres as wilderness study areas and in elimination of approximately 150 million acres from further wilderness consideration.

Study: Each wilderness study area will be studied through the BLM resource management planning process to analyze the values, resources, and uses within the area. The findings of each wilderness study, including public participation are to be used in determing whether these areas will be recommended as suitable or nonsuitable for designation as wilderness. In practice, determining an area's suitability or nonsuitability * * * for preservation as wilderness," in the words of FLPMA, means determining whether the area is more suitable for wilderness designation or more suitable for other uses.

Reporting: When a study has been completed, recommendations as to whether the wilderness study areas are suitable or nonsuitable for designation as wilderness are made through the Secretary of the Interior to the President. A mineral survey will be conducted by the Geological Survey and Bureau of Mines for areas recommended as suitable. Reports on all wilderness study areas must reach the President no later than October 21, 1991.

Chapter II. Wilderness Study Process

A. Wilderness Studies in the BLM Planning System

This document consists of national guidance for wilderness studies and supplements the regulations of the BLM multiple resource management planning system (43 CFR Part 1601). The BLM planning regulations apply to the public lands and to their varied multiple resources. The planning regulations provide for issuance of guidance in the form of national level policy and procedure guidance for planning.

The primary national level policy guidance for plans involving wilderness are presented in this chapter. This guidance consists of (1) a wilderness program policy, (2) wilderness study policy and planning criteria, and (3) quality standards for analysis and documentation. The wilderness program policy states the Bureau of Land Management's view of wilderness in the context of multiple resource management. The wilderness study policy and planning criteria specify factors and quality standards to be addressed through the planning process in determining whether an area is suitable for preservation as wilderness or more suitable for other uses. The wilderness planning criteria and quality standards will be applied in the planning process, along with guidance already issued for other resource programs, to determine the most appropriate alternative for use of the land under study.

The diagram of the *BLM Planning System* illustrates the BLM's interdisciplinary approach to resource management planning and the manner in which wilderness is considered along with other resources in determining land use allocations.

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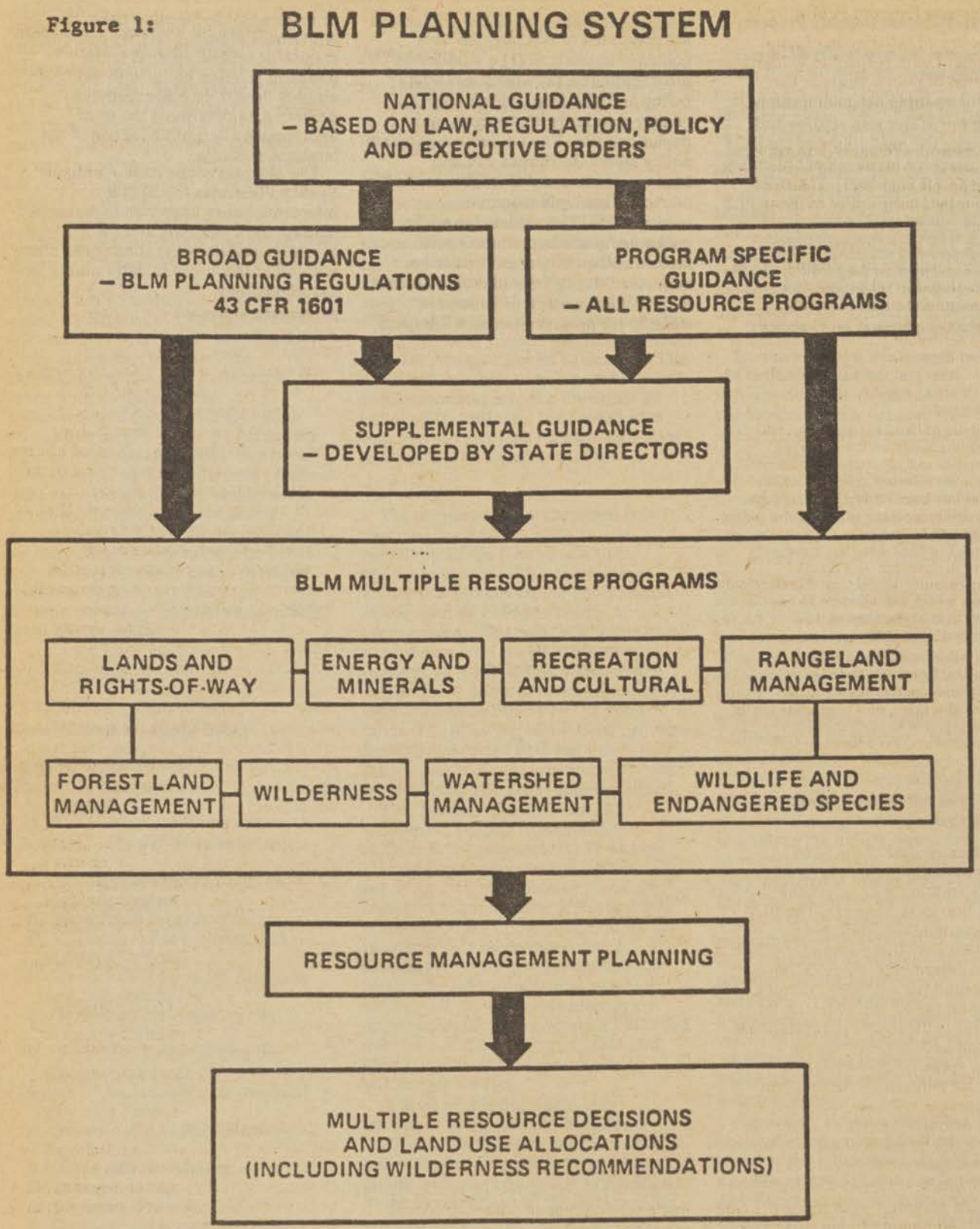
Figure 1:



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B. Wilderness Program Policy

The policy of the Bureau of Land Management with respect to wilderness designation of public lands in the context of multiple use management is as follows:

The purpose of wilderness designation, as the Wilderness Act states, is to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. The Bureau of Land Management recognizes wilderness as a resource deserving consideration with other reasources and uses on the public lands. The BLM also recognizes wilderness as a resource which fits within the framework of multiple-use on the public lands. In addition to its value as a setting for primitive recreation or solitude, wilderness can provide a range of benefits to other multiple resource values and uses which are of significance to the American people.

The Bureau of Land Management will identify public lands with wilderness characteristics and recommend wilderness designation on selected areas for which wilderness has been determined, through careful multiple resource analysis and public involvement, to be the most appropriate use of the land. The BLM does not view wilderness designation as a form of temporary resource protection; therefore only those areas which can be managed as wilderness in the long term will be recommended as suitable for designation.

Once a wilderness area has been designated by Congress, the BLM will effectively manage it to preserve its wilderness character, and to provide for its use and enjoyment in such manner as will leave it unimpaired for future use and enjoyment as wilderness.

C. Wilderness Study Policy and Planning Criteria

The primary goal of the BLM wilderness study process is to determine an area's suitability or nonsuitability for preservation as wilderness. The BLM will recommend for wilderness designation only those areas for which it has been determined, through the Bureau's multiple resource planning process and public involvement, that wilderness is the most appropriate use of the land and its resources. In addition, areas recommended as suitable for wilderness designation should possess wilderness values and multiple resource benefits capable of balancing the benefits of other resource values and uses which would be foregone due to wilderness designation.

The BLM planning regulations provide for the development of planning criteria by the District Manager to guide the development of a resource management plan, transition management framework plan (MFP) or MFP amendment, and to provide parameters for analysis and decisionmaking. Criteria are developed for each resource element which represents an issue in a planning effort. The planning regulations also provide for National and State Director guidance to District Managers. In the context of national guidance, all District Managers are required to use the wilderness planning criteria for those plans involving WSA's.

The two wilderness planning criteria should be used along with criteria developed for other resources and issues to determine an area's suitability or nonsuitability for wilderness designation. These criteria will be applied to each WSA through the BLM planning process and the results of this application will be considered and documented in determining whether an area is more suitable for wilderness or for other uses.

All BLM wilderness recommendations—both "suitable for preservation as wilderness" and "nonsuitable"—will be justified on the basis of the following criteria.

Criterion No. 1. Evaluation of Wilderness Values

Consider the extent to which each of the following components contributes to the overall value of an area for wilderness purposes.

a. Mandatory wilderness characteristics: The quality of the area's wilderness characteristics—size, naturalness, and outstanding opportunities for solitude or primitive recreation.

b. Special features: The presence or absence, and the quality of the optional wilderness characteristics—ecological, geological, or other features of scientific, educational, scenic, or historical value.

c. Multiple resource benefits: The benefits to other multiple resource values and uses which only wilderness designation of the area could ensure.

d. Diversity in the National Wilderness Preservation System: Consider the extent to which wilderness designation of the area under study would contribute to expanding the diversity of the National Wilderness Preservation System from the standpoint of each of the factors listed below:

(1) Expanding the diversity of natural systems and features, as represented by ecosystems and landforms.

(2) Assessing the opportunities for solitude or primitive recreation within a day's driving time (5 hours) of major population centers.

(3) Balancing the geographic distribution of wilderness areas.

The analysis should consider—in separate categories—Federal and State lands designated as wilderness, areas officially recommended for wilderness, and other Federal and State lands under wilderness study. (The State lands referred to here are those involved in State government's wilderness programs.)

Criterion No. 2. Manageability

The area must be capable of being effectively managed to preserve its wilderness character.

D. Quality Standards for Analysis and Documentation

In addition to the two wilderness planning criteria, a set of quality standards for analysis and documentation has also been established for wilderness EIS's or EA's and wilderness study reports. The information and analysis needed to meet these standards are normally generated through BLM planning efforts. Most of these standards are part of the general standards used for multiple use planning. The standards specify that certain information and analysis is related to making a wilderness recommendation and that it is to be consolidated into a common format for wilderness EIS's and wilderness study reports. The information necessary to satisfy these standards will be generated through appropriate sections of the wilderness planning and EIS effort. The quality standards should be addressed individually for each WSA in the wilderness study report. The use of quality standards fosters consistency in documenting the rationale for wilderness recommendations and ensure that other resource considerations are being adequately addressed in wilderness EIS's. The use of quality standards in wilderness study reports facilitates administrative review of BLM wilderness recommendations by providing consistency in the types of information and analysis presented in each wilderness study.

The following are the six quality standards for analysis and documentation that must be addressed:

Standard No. 1. Energy and Mineral Resource Values

Recommendations as to an area's suitability or nonsuitability for wilderness designation will reflect a thorough consideration of any identified or potential energy and mineral resource values.

Standard No. 2. Impacts on Other Resources

Consider the extent to which other resource values or uses of the area

would be foregone or adversely affected as a result of wilderness designation.

Standard No. 3. Impact of Nondesignation on Wilderness Values

Consider the alternative use of land under study if the area is not designated as wilderness, and the extent to which the wilderness values of the area would be foregone or adversely affected as a result of this use.

Standard No. 4. Public Comment

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM wilderness study process will consider comments received from interested and affected publics at all levels—local, State, regional, and national. Wilderness recommendations will not be based exclusively on a vote-counting majority rule system. The BLM will develop its recommendations by considering public comment in conjunction with its analysis of a wilderness study area's multiple resource and social and economic values and uses.

Standard No. 5. Local Social and Economic Effects

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM will give special attention to adverse or favorable social and economic effects, as identified through the wilderness study process, which designation of the area would have on local areas.

Standard No. 6. Consistency with Other Plans

In determing whether an area is suitable or nonsuitable for wilderness designation, the BLM will consider and document the extent to which the recommendation is consistent with officially approved and adopted resource-related plans of other Federal agencies, State and local governments, and Indian tribes (and the policies and programs contained in such plans), as required by FLPMA and the BLM planning regulations.

E. Guidelines for Applying the Planning Criteria

This section describes the criteria which the BLM will apply to each of the wilderness study areas. This process is compatible with the way BLM field officials apply planning criteria and policy guidance issued for other resource programs. In developing a multiple use plan, BLM, field officials apply the planning criteria for relevant resource programs concurrently, and use them to develop multi-program criteria for specific plans. These are then used to determine the most appropriate land use allocations for the affected public lands.

The criteria presented here represent national guidance for the BLM wilderness program. The BLM planning regulations also provide that supplemental planning criteria may be issued by State Directors and District Managers for all resource programs based on particular issues pertinent to a given State, District, or planning area. Any such additional criteria issued by a State Director or District Manager must be fully consistent with the national planning criteria.

The purpose of the guidelines below is to explain the meaning and intent of the criteria so as to foster consistency in the process used to arrive at wilderness recommendations throughout the BLM. The wilderness planning criteria must be individually applied to each wilderness study area according to the guidance contained in this section. Each criterion must be fully considered and documented in determining whether a WSA is more suitable for wilderness or other uses.

Criterion No. 1. Evaluation of Wilderness Values

Application: While it is useful for analytic purposes to make a distinction between these components, all four components will be considered in determining an area's wilderness values. Section 4(b) of the Wilderness Act of 1964 recognized the broad scope of values to be considered in administering wilderness area by stating: "* * * wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." Therefore, when evaluating an area's wilderness values, after focusing on an area's recreational values and its mandatory wilderness characteristics, these optional characteristics should be taken into account. Every effort should be make to provide an equal assessment of the full range of benefits and values which only wilderness designation could ensure for the area. All four of these components must be fully evaluated and documented in determining an area's value as wilderness.

Component No. 1: Quality of the Area's Mandatory Wilderness Characteristics

In the Wilderness Act of 1964, Congress defines wilderness and directs that each wilderness area be managed to preserve its wilderness character. Under the definition in Section 2(c) of the Wilderness Act, certain wilderness characteristics are mandatory, while others are optional. The mandatory wilderness characteristics—size, naturalness, and outstanding opportunities for solitude or a primitive and unconfined type of recreation—were the factors used in the BLM wilderness inventory to determine which roadless areas qualified to become wilderness study areas (WSA's).

Therefore, the WSA's entering the wilderness study process should possess the mandatory wilderness characteristics, but these characteristics may be present in areas to varying degrees. One WSA may contain outstanding opportunities for both solitude and primitive recreation, while another area may possess outstanding opportunities only for solitude; one WSA's outstanding opportunities for solitude may be superior to those in another WSA. The size of a particular WSA—whether it is barely 5,000 acres or well over 200,000—may affect its suitability for wilderness as well. The degree of naturalness may also vary between areas, depending on the presence of incompatible uses, and on the number of vehicle ways and other imprints of man.

If some type of comparison between WSA's is utilized, the rationale for its use and the specific methodology used in making comparisons must be documented in any wilderness EIS and wilderness study report. In each wilderness study objective information will be gathered to enable judgment on the extent to which the quality of the area's mandatory wilderness characteristics contributes to its suitability for wilderness designation. Matrix classifications and other descriptive methods may be used in documentation and to facilitate comparative analyses of qualitative characteristics. However, arbitrary assignments of numerical weights and/or subjective ratings or rankings should not be used in BLM wilderness studies.

This section defines each of these wilderness characteristics and outlines the key elements which must be addressed in evaluating this component of the area's wilderness values. BLM field staff should consider making use of the Recreation Opportunity Spectrum (ROS) as an evaluative tool in the application of this component. Guidance on the application of the ROS is contained in BLM Instruction Memorandum No. 81-273, Interim Guidance for Planning for Recreation Resources, issued February 20, 1981. The degree to which each of these key elements is present in the area under study determines the quality of its mandatory wilderness characteristics.

These elements must be documented and summarized as outlined below.

A. Naturalness

"Naturalness" refers to the requirement in Section 2(c) of the Wilderness Act that a wilderness area "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." The language in the Act makes clear that areas may be designated as wilderness which "generally appear" natural and which may contain some imprints of man's work, so long as those imprints are "substantially unnoticeable" in the wilderness area as a whole. There are wilderness study areas which have minor human imprints within their boundaries which are substantially unnoticeable in the WSA as a whole. While these imprints may not have been sufficient to eliminate an area from WSA status, they must be further evaluated during the study process to determine the extent to which their presence affects the quality of overall naturalness of the area. There may also be imprints which have occurred in WSA's as a result of impairing uses or activities allowed under the BLM's Interim Management Policy. Impacts on the overall naturalness of the WSA resulting from grandfathered uses or valid existing rights should be assessed to determine whether the impairment is substantially noticeable in the WSA or if it has eliminated or diminished the quality of wilderness characteristics in all or part of the area.

Human imprints present in the WSA should be evaluated both individually and on a cumulative basis as well. Such imprints should be summarized and documented according to each of the following factors:

1. General description of those imprints present;
2. Distinguish those imprints which are the results of activities occurring outside the area;
3. Location and size of the areas in the WSA which are subject to imprints;
4. Potential for separating imprinted portions from the rest of the area and recommending the remainder for wilderness designation; (This may be considered through the development of partial wilderness alternatives. See Section III.H.2).
5. The overall influence of human imprints on the naturalness of the area.

Consideration of Outside Sights and Sounds: During the wilderness study, sights and sounds of human activities and works outside the boundaries of the wilderness study area may be taken into account in assessing the quality of an area's naturalness or its opportunities for solitude or primitive recreation. Any influence of outside sights and sounds upon naturalness or opportunities for solitude or primitive recreation within the WSA should be documented.

Congressional guidance on this issue in House and Senate reports on the Endangered American Wilderness Act of 1978 has cautioned Federal agencies on the consideration of outside sights and sounds in wilderness studies. For example, in the case of the Sandia Mountain Wilderness in New Mexico, the House Report (No. 95–540), stated:

> The "sights and sounds" of nearby Albuquerque, formerly considered a bar to wilderness designation by the Forest Service, should, on the contrary, heighten the public's awareness and appreciation of the area's outstanding wilderness values.

While the Sandia Mountain case represents an example where outside sights and sounds do not have a negative impact on wilderness values, there may be other instances where outside influences would contribute to a nonsuitable recommendation or result in a boundary adjustment. Works of man outside the study area may influence a visitor's preception of the study area's naturalness if the visitor can see the developments. On the other hand, if human activities associated with the developments can be seen or heard from within the study area, they may influence a visitor's perception of the opportunities for solitude. Depending upon whether human activities associated with the developments can be seen or heard from the study area, the effects of the developments may be assessed in the sections on naturalness and solitude. The reasonable standard to be applied to outside sights and sounds is to determine whether they enhance or diminish the benefits of wilderness designation in the area or in the affected portion of the area.

B. Outstanding Opportunities for Solitude or Primitive and Unconfined Recreation

Section 2(c) of the Wilderness Act states that a wilderness area must have "* * * outstanding opportunities for solitude or a primitive and unconfined type of recreation." The word "or" in this sentence means that it does not have to possess outstanding opportunities for *both* solitude and primitive recreation; it only has to possess one or the other. The BLM wilderness inventory process should have determined those areas which contain outstanding opportunities for either solitude or primitive recreation and those areas which exhibit both characteristics. The process described below will aid in determining and documenting the *degree* to which these characteristics are present in each area.

Criteria for determining the presence or absence of outstanding opportunities for solitude or primitive and unconfined recreation were issued in the BLM Wilderness Inventory Handbook. As a result of the wilderness inventory, information is already on file in BLM field offices with respect to the opportunities for solitude or primitive and unconfined recreation in each wilderness study area. This information will be used in the study process.

1. *Solitude.* For the purposes of the BLM wilderness review process, solitude has been defined as (1) "the state of being alone or remote from habitations; isolation; (2) a lonely, unfrequented, or secluded place." The emphasis is on the opportunities a person has to avoid the sights, sounds, and evidence of other people within a particular WSA, rather than on opportunities for solitude in comparison to habitations of man. While the BLM recognizes that there is some inherent subjectiveness present in this characteristic, there are also certain intrinsic features of an area which can be assessed objectively with respect to an area's outstanding opportunities for solitude. The features of the area to be considered in evaluating its outstanding opportunities for solitude are:

a. Size and configuration;
b. Topographic screening;
c. Vegetative screening;
d. Presence of outside sights and sounds and whether they enhance or diminish the benefits of wilderness designation in the area or the affected portion of the area;
e. Ability of the user to find a secluded spot.

2. *Primitive and Unconfined Recreation.* For the purposes of the BLM wilderness review process, "a primitive and unconfined type of recreation" refers to those activities that provide dispersed, undeveloped recreation which do not require facilities or motorized equipment. Those areas which the BLM wilderness inventory has found to possess outstanding opportunities for this type of recreation contain either a diversity of possible activities or one activity of outstanding quality.

The evaluation of this characteristic should be based on an analysis of the intrinsic features of the area which make a primitive recreation experience possible and the quality and diversity of the area's specific primitive recreation opportunities. The Recreation Opportunity Spectrum may prove to be

useful in assessing primitive recreation opportunities present in WSA's.

Component No. 2: Special Features: Quality of the Area's Optional Wilderness Characteristics

Section 2(c) of the Wilderness Act states that a wilderness area "* * * may also contain ecological, geological, or other features of scientific, educational, scenic or historical value." The presence and quality of these special features will contribute to the value of an area as wilderness.

These optional wilderness characteristics were considered "supplemental" during the BLM wilderness inventory and were not mandatory for an area to be identified as a wilderness study area, because the Wilderness Act definition of wilderness does not require them to be present. During wilderness studies, these features similarly are not mandatory for an area to be recommended as suitable for wilderness designation. However, as part of the wilderness study process, these characteristics should also be thoroughly considered when assessing an area's overall value as wilderness. For example, in some areas, outstanding opportunities for solitude may be the primary reason for recommending an area as suitable for wilderness designation. In other areas, the presence of special wildlife values or a special geological feature may provide additional reasons for recommending an area for wilderness designation.

While these values and features do not need to be present in an area for wilderness designation to occur, section 4(b) of the Wilderness Act recognized the importance of such values in wilderness by stating that "* * * wilderness areas shall be devoted to the public purpose of recreation, scenic, scientific, educational, conservation and historical use."

These special features of the area and the degree to which their presence enhances its suitability for wilderness designation should be addressed through consideration of the area's ecological, geological, scenic, and cultural features, and its scientific and education values. The evaluation should be based on an assessment of the estimated abundance or importance of each of these values to the area.

Component No. 3: Multiple Resource Benefits: The Benefits to Other Multiple Resource Values and Uses Which Wilderness Designation of the Area Could Ensure

The report of the House Interior and Insular Affairs Committee on FLPMA (House Report 94–1163) states with respect to the BLM wilderness review:

> Emphasis should be on multiple natural values of roadless areas as part of an overall multiple use framework for a general area rather than primarily recreational uses. In addition to public use values, ultimate designation as wilderness should augment multiple use management of adjacent or nearby lands in protecting watershed and water yield, wildlife habitat preservation, preserving natural plant communities and similar natural values.

The same emphasis on multiple resource values of wilderness appears in the Endangered American Wilderness Act of 1978, which explicitly recognized watershed preservation and wildlife habitat protection as objectives of wilderness designation.

The BLM wilderness program policy recognizes the ability of wilderness areas to ensure multiple resource benefits, in these words:

> In addition to its value as a setting for primitive recreation or solitude, wilderness can also provide a range of benefits to other multiple resource values and uses which are of significance to the American people.

These may include protection of watersheds, water yield, and water quality; protection of wildlife habitat; preservation of natural plant communities; preservation of cultural and archaeological resources; and protection of scenic quality and other natural values. The extent to which the area under study can provide such benefits will contribute to its suitability for wilderness designation. The following are the primary categories of resource uses (other than wilderness values) which could benefit from wilderness designation. These should be addressed in terms of both on-site benefits (those occurring within the WSA) and off-site benefits (those occurring outside the WSA) which could only be ensured through wilderness designation of an area:

A. Multiple resource values and uses which already exist in the area whose continued viability could only be ensured through the protective status of wilderness designation, such as wildlife habitat and archeological sites;

B. Multiple resource values and uses which do not exist in the area now, but which could occur in the future only as a result of the protective status of wilderness designation and natural ecological processes being allowed to function unimpeded. Examples include the return of wildlife and fish species formerly found in the area, or an improvement in water quality as a result of wilderness designation;

C. Specific benefits likely to accrue to off-site areas not within the boundaries of the wilderness study area. Consider such benefits as protection of watersheds, water yield and water quality; and preservation of visual resources within the WSA as seen from outside the WSA boundary.

Component No. 4: Diversity in the National Wilderness Preservation System

Application: Use of The Statewide Wilderness Status Summary. The principal tool in applying this component is the statewide wilderness status summary which will be developed to accompany each wilderness study report (WSR). This summary will place individual wilderness recommendations in the broader context of other Federal and State lands either already designated as wilderness or recommended as wilderness. This component is only one of many considerations in determining the value of an area for wilderness and the degree to which it influences a particular wilderness recommendation must be documented.

Through the use of a statewide map, a series of associated tables, and narrative text descriptions, the wilderness status summary will display the most current information on the status and distribution of the NWPS within the State in relation to those areas being recommended in the report package and those under study by all Federal agencies. It will also summarize the ecosystem/landform representations of the areas being recommended in the report package and list those population centers which are within one day's driving time (5 hours). The format for summarizing and displaying these data in tabular form is contained in Appendix C of the *Draft* Wilderness Study Policy.

The statewide wilderness status summary will be used in applying this component and will be updated by the State Director for submission with the State's annual reporting package (containing preliminary wilderness recommendations) to the Director for administrative review.

The three factors considered in this component will be treated as explained below.

Factor No. 1. Expanding the diversity of natural systems and features, as represented by ecosystems and landforms

Application: BLM wilderness study areas (WSA's) contain a number of dominant physical and biological characteristics which can be integrated and classified into regional land units called ecosystems. The classification of

ecosystems is based upon an integration of the natural factors of climate, vegetation, soils, and landform. Wilderness designation presents an opportunity to preserve examples of the basic ecosystems and landforms present in the United States in an unimpaired condition for future generations. Although there are many varied land classification systems available, the BLM has selected the Bailey-Kuchler Ecosystems of the United States system utilized by the U.S. Forest Service in its RARE II and "further planning" wilderness studies. (See Bailey, Robert G., 1976, Ecoregions of the United States, USDA, U.S. Forest Service and Kuchler, A. W., 1966, Potential Natural Vegetation of the United States, USDI, Geological Survey.) The Bailey-Kuchler system was selected because it is a land classification system which facilitates planning at the national level and provides a broad synthesis of current knowledge about the ecosystem geography of the country. It also serves as a useful reference for those who desire an overview on a comparable basis of ecosystem and landform representation in existing and potential NWPS units. Land areas providing ecosystem and landform representations within the NWPS should be greater than 1,000 acres in size to typify the dynamics of an ecosystem. On a site-specific basis, the Bailey-Kuchler system may be further refined to reflect the presence of unique ecosystems or landforms within WSA's at a finer lever of detail than a nationwide land classification system can provide.

Factor No. 2. Assessing the opportunities for solitude or primitive recreation within a day's driving time (five hours) of major population center.

Application: This factor is based on the concept that there is a need to provide opportunities for solitude and primitive recreation experience within a day's driving time of the Nation's population centers. In fact, House Report No. 95–540, on the Endangered American Wilderness Act of 1978, states that one of the goals of Congress is "creating parks and locating wilderness areas within close proximity to population centers." For the purposes of applying this factor, a day's driving time is considered to be five hours. The associated mileage figure will vary depending upon quality and availability of transportation routes and the accessibility of the area. Population centers are defined as Standard Metropolitan Statistical Areas (SMSA's) which have populations of 100,000 or greater. An SMSA is defined by the U.S. Bureau of the Census as a county containing at least one city of 50,000 inhabitants or more plus as many adjacent counties as are metropolitan in character and are socially integrated with that central city or cities.

The SMSA's were chosen to represent population centers despite their relatively small number in the West because one of the purposes of applying this factor is to acquire a relative measure of the potential demand being placed on widlerness areas. To accomplish this, it is necessary to utilize areas of high population concentration, such as SMAS's, to provide a realistic and uniform indicator of where demand may be located. The BLM Washington Office has provided State Offices with the most recent listing of SMSA's for the Western States as compiled by the U.S. Office of Management and Budget and will update the list when the results of the 1980 Census are completed.

In addition, when determining current opportunities for solitude or primitive recreation in the NWPS, it is important to consider the purpose which each wilderness area serves under its particular management agency. For example, many Fish and Wildlife Service wilderness areas are managed primarily for wildlife conservation purposes and therefore may not provide for primitive recreation needs.

To apply this factor, first determine those population centers which are within one day's driving time of each area under study. Then identify all Federal and State designated wilderness, those areas recommended by the President or responsible State official for wilderness designation and BLM and other agency WSA's which are within one day's driving time of the population centers. This information should be summarized and displayed as shown in Appendix C, Table IV of the Draft Wilderness Study Policy to provide a basis for analysis of this factor.

Factor No. 3. Balancing the geographic distribution of wilderness areas

Application: Utilize the statewide wilderness status summary to document and display information concerning the size and location of all Federal lands under study for wilderness designation and all areas either already designated or recommended to Congress as wilderness within both the State and the surrounding region. State-administered wilderness should also be included in this assessment.

This factor will not be used as the sole basis for determining whether an area is recommended as suitable or nonsuitable for wilderness designation. However, the degree to which this factor contributes to an area's value as wilderness will determine its effect on the suitability recommendation. The following examples should help to illustrate this point. Depending on the amount of designated or administratively-endorsed wilderness present in a state or surrounding region, such circumstances, considered in conjunction with other factors in an overall context, could contribute to a nonsuitable recommendation for a WSA in the same region. On the other hand, if a WSA is located in such a region with no designated or administratively-endorsed wilderness, this may have a positive influence on recommending the WSA as suitable for wilderness designation.

The following types of areas must be considered in analyzing the geographic distribution of wilderness in relation to the areas being recommended in the study (see Appendix C, Table I of the Draft Study Policy).

1. BLM WSA's;
2. BLM designated wilderness;
3. BLM WSA's which have been recommended as suitable for wilderness by the President;
4. Other agency designated wilderness—includes U.S. Forest Service (USFS), U.S. Fish and Wildlife Service, and National Park Service;
5. Other agency areas which have been recommended as suitable for wilderness by the President;
6. USFS "further planning" areas, and all other Federal and State lands under wilderness review;
7. All State-administered areas either designated as wilderness or recommended as wilderness by the Governor or other responsible State official.

Criterion No. 2. Manageability: The area must be capable of being effectively managed to preserve its wilderness character.

Application

A. *General:* The primary intent of this criterion is to ensure that those areas recommended as suitable for wilderness designation can be managed as wilderness in a manner which enables the *entire* area designated to remain as wilderness in the long term. The area must be capable of being managed over the long run to preserve its wilderness character—both to maintain the quality of its wilderness characteristics and to ensure continuation of its uses and multiple resource benefits.

To determine whether the area can be managed as wilderness, the provisions of BLM's wilderness management policy must be considered. The BLM's Final

Wilderness Management Policy was published in the **Federal Register** on September 24, 1981. It describes in detail how the BLM will manage public lands designated by Congress as part of the National Wilderness Preservation System.

A detailed wilderness management plan for each area will *not* be developed during the wilderness study. After Congress has designated an area as wilderness, the BLM will develop a detailed wilderness management plan as part of the activity planning phase for each area. However, the wilderness study should consider the basic thrust of wilderness management appropriate to the area in view of the expected uses and activities in the area. For instance, part of the area might be managed with emphasis on protecting undisturbed wildlife habitat, while another part might be managed with emphasis on primitive camping use. Attention should be given to means for protecting wilderness characteristics (including special features) and for dealing with specific management problems anticipated as a result of nonconforming but accepted uses within the area or other conflicting uses outside of the area. The phrase "effectively managed" means that an area can be managed to maintain the public benefits which justified wilderness designation.

As stated in the wilderness program policy, "the BLM does not view wilderness designation as a form of temporary resource protection; therefore only those areas which can be managed as wilderness in the long term will be recommended as suitable for designation." The Wilderness Act provides for exercise of existing private rights and for certain special uses that are not necessarily consistent with preservation of wilderness character existing at the time an area was designated wilderness. This creates the potential for some impairment of an area's wilderness character which is acceptable under wilderness management. Therefore, it is seldom possible to be absolutely certain that an area can be managed as wilderness without some degradation of wilderness values due to uses permitted by the law. Disqualifying a WSA from consideration as suitable for wilderness preservation based solely on assumptions about the future degradation of wilderness values resulting from mining and grazing activities which the Wilderness Act allows would be inconsistent with that Act. To satisfy this criterion, BLM must be *reasonably* certain that the area can be managed as wilderness over the long run, based on present knowledge of the resources and private rights in the area, and recognizing congressional intent regarding allowed uses. On the other hand, if the allowed uses are *reasonably* certain to destroy the wilderness character of the area on a significant portion of it, then the BLM would conclude that the affected portion cannot be managed as wilderness. In addition, the impacts of uses and activities in WSA's allowed under the BLM's Interim Management Policy and the effects such actions may have on the future management of each area as wilderness should also be assessed.

B. *Land Status:* A determination and documentation of the land status of the WSA must also be considered in determining the manageability of an area as wilderness. Subsurface rights in a WSA may be owned by a party other than the Federal Government, thus limiting BLM's ability to preserve wilderness character on the surface. In examining the degree of BLM control over the surface of the WSA, the extent to which each of the following is present could affect the area's suitability for wilderness designations: Private inholdings, State lands, valid existing rights, valid mining claims, mineral leases, rights-of-way, and the overall pattern of land status. These circumstances and others which may limit BLM's ability to manage the area effectively as wilderness must be summarized and documented.

C. *Access to State or Private Inholdings:* The BLM wilderness management policy, following the direction provided in the Wilderness Act, provides for adequate access to non-Federal lands surrounded by a wilderness area. In applying the manageability criterion, the BLM will carefully assess the potential impact of providing access to non-Federal inholdings and the likely development of such uses or inholdings.

D. *Use of Buffer Zones:* It is the policy of the BLM not to create protective buffer zones around wilderness areas. The fact the nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activites or uses up to the boundary of the wilderness area. Therefore, the use of buffer zones will not be considered when analyzing an area's manageability as wilderness.

E. *Air Quality:* The BLM will not consider or recommend any change in air quality classification as part of the wilderness study or wilderness recommendations. All BLM-administered public lands were designated as Class II by the 1977 Clean Air Act Amendments. Any further air quality reclassification is the prerogative of the State government, not of the BLM.

F. Guidelines for Satisfying the Quality Standards

This section describes the information and analysis necessary to meet the quality standards for analysis and documentation in wilderness EIS's and study reports. It also relates the information generated through the BLM planning process to the decision process involved in making a wilderness recommendation. It is important to understand that the information required by these standards may be covered in various points in any wilderness EIS document. However, these standards should be consolidated individually for each WSA in the wilderness study report.

Standard No. 1. Energy and Mineral Resource Values

Recommendations as to an area's suitability or nonsuitability for wilderness designation will reflect a thorough consideration of any identified or potential energy and mineral resource values present in the area.

Application: This standard reflects the mandates given to the Department of the Interior and the BLM by the President and Congress that all Bureau programs be geared towards meeting the national goal of decreasing reliance on foreign production through increased domestic energy production. It also reflects the national need for those minerals that are critical to the enconomy and security of the United States and for which we are or could become dependent on potentially unreliable foreign sources.

Energy and mineral resource values and potential will be identified by BLM mineral resource specialists for WSA's through the use of the BLM's established Geology-Energy-Mineral (GEM) resource assessment procedures. The BLM will use its GEM resource assessment to identify the potential of the WSA's, or specific portions thereof, for occurrence of energy and mineral resources by type of commodity. To highlight critical and strategic minerals, field officials should refer to the National Defense Stockpile Inventory of Strategic and Critical Materials. In addition, mineral surveys will be conducted by the Geological Survey (GS) and the Bureau of Mines (BM) as required by section 603 of FLPMA for those areas recommended as suitable for wilderness designation. Where conducted, the results of the mineral survey will be fully considered by the Director of the BLM in arriving at recommendations on wilderness

suitability. The completed mineral survey report will be available for public review after its completion.

As part of the BLM mineral resources assessment program, the BLM will also develop a procedure to encourage individuals or groups knowledgeable of the energy and mineral resources of individual WSA's to provide the BLM with their estimate of each area's mineral resource potential.

Standard No. 2. Impacts on Other Resources

Consider the extent to which other resource values or uses of the area would be foregone or adversely affected as a result of wilderness designation.

Application: Any plan or EIS containing wilderness recommendations should identify a range of alternatives allocating combinations of all or part or none of the WSA's to wilderness designation. If the *preferred alternative* proposed in the plan recommends the area as either suitable or nonsuitable for wilderness designation, the BLM should identify the probable impacts on other resource values and uses present in the area which could result from wilderness designation. The other resource values and uses to be addressed in this regard include energy, minerals, timber, rights-of-way, water developments, rangeland, range improvements, recreation, wildlife, and all other forms of resource use practiced on the public lands. The extent to which wilderness designation may cause adverse impacts on a particular resource use will vary from area to area, depending on a number of factors, including:

a. The degree to which the other resource is present in the WSA;

b. The potential for further development of the other resource in the WSA;

c. The degree to which the other resource is present on other public and private lands *outside* the WSA;

d. local or regional economic dependence on the resource in the WSA;

e. The degree to which use or development of the resource is compatible with or conflicts with management of the area as wilderness.

Standard No. 3. Impacts of Nondesignation on Wilderness Values

Consider the alternative use of the land under study if the WSA or some portion of the WSA is not designated as wilderness and the extent to which the wilderness values of the area would be foregone or adversely affected as a result of this use.

Application: Any plan or EIS containing wilderness recommendations will identify an alternative use for the land under study if the WSA or some portion of the WSA is not designated as wilderness. In a resource management plan (RMP) where a WSA is being recommended as *nonsuitable* for wilderness designation, the preferred alternative will state a proposed use for the land which is some resource use or combination of uses other than wilderness. The probable effects of that alternative use on the wilderness values of the WSA would be identified in the plan and EIS or EA.

In RMP's where the preferred alternative is to recommend the WSA as *suitable* for wilderness designation, one of the other alternatives should be identified as the proposed use or uses of the land in case the area ultimately is *not* designated as wilderness by Congress. The probable impacts of such uses on the wilderness values of the area must be addressed in the related RMP and EIS. The need to emphasize this alternative arises from the possibility that preliminary wilderness recommendations made by State Directors may be altered during the administrative review and reporting process and ultimately may not be accepted by Congress.

The process described above addresses wilderness recommendations contained in resource management plans (RMP's). The identification of alternative uses of the land, and their related impacts on wilderness values should be handled similarly when a WSA is considered in the context of a transition MFP. In the MFP Step II Recommendations for wilderness, the District Manager will identify an alternative for the use of the area under study should the WSA not be designated as wilderness. The impacts of this alternative use on the area's wilderness values should be evaluated in the wilderness EIS or EA after completion of the MFP.

This standard will be addressed somewhat differently when a WSA is considered in an MFP amendment. In most MFP Amendments, the alternative uses of the area will be those identified in the "No Action" alternative. However, other nonwilderness alternatives may be considered in the wilderness plan amendment if they have developed as a result of new information generated by the wilderness study or if new policies are in effect which could change the present management or use of the area as outlined in the existing MFP. For example, due to the need for good quality energy and minerals information when making a wilderness recommendation, additional data and analysis not contained in the existing MFP may be produced through the wilderness study. This new information may indicate the presence of high oil and gas potential in the WSA which was unknown prior to undertaking the wilderness study. In such a case, it seems logical that at least one nonwilderness alternative should be formulated to consider oil and gas development as an alternative to wilderness designation. There are likely to be cases where new information or new policies (e.g., areas of critical environmental concern) may dictate the inclusion of additional nonwilderness or partial wilderness alternatives in MFP amendments. However, field officials should attempt to limit the scope of the MFP amendment to wilderness related considerations and issues so that the plan amendment and EIS process can proceed expeditiously without unnecessary analysis and burdensome delays.

Standard No. 4. Public Comment

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM wilderness study process will consider comments received from interested and affected publics at all levels—local, State, regional, and national. Wilderness recommendations will not be based exclusively on a vote-counting majority rule system. The BLM will develop its recommendations by considering public comment in conjunction with its analysis of a wilderness study area's multiple resource and social and economic values and uses.

Application: A detailed outline of how the BLM will obtain public involvement and provide participation opportunities for State and local governments during the wilderness study process appears in Chapter IV of this document.

Standard No. 5. Local Social and Economic Effects

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM will give special attention to adverse or favorable social and economic effects, as identified through the wilderness study process, which designation of the area would have on local areas.

Application: This standard provides a focus on local concerns by undertaking a consideration and documentation of adverse or favorable social and economic effects which wilderness designation would have on local areas. The term "local" shall be defined as the county or counties surrounding the WSA(s) addressed in the planning

effort. These effects will be identified and analyzed through the BLM planning process and subsequently documented and summarized for review by decisionmakers.

In addition, any social and economic analysis which takes place during the wilderness study should be consistent with the guidance contained in the BLM's Social and Economic Policy and Action Plan (Instruction Memorandum No. 81–315). Further program specific guidance on social and economic analysis techniques and data requirements for wilderness will be issued to the field in the near future.

Standard No. 6. Consistency with Other Plans

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM will consider and document the extent to which the recommendation is consistent with officially approved and adopted resource-related plans of State and local governments, and Indian Tribes, as required by FLPMA and the BLM planning regulations.

Application: FLPMA requires BLM plans to be consistent with State and local plans to the maximum extent the Secretary of the Interior finds consistent with Federal law and the purposes of FLPMA. Additionally, the BLM planning regulations (43 CFR Part 1601) provide that planning guidance and plans shall be consistent with officially approved and adopted resource-related plans of other Federal agencies, State and local governments, and Indian Tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal law and regulation applicable to public land. Where such plans do not exist, or are being developed, BLM guidance and plans shall to the extent practical be consistent with the officially approved and adopted resource-related policies and programs of the other entities so long as the guidance and resource management plans are consistent with Secretarial policies and programs. Wilderness recommendations must be determined through and supported by the BLM resource management planning process.

If a State or local government or an agency of the Federal government notifies the BLM in writing that the preliminary wilderness recommendation or any specific part of it is not consistent with that government's policies and progams, BLM will respond to this comment in the wilderness study report, explaining how the consistency issued was resolved, and why. Although there will be some cases where inconsistencies remain, every effort will be made by the BLM to mitigate the impacts of such inconsistencies.

Chapter III. Relationship to the BLM Planning System

A. Relationship to the BLM Planning Regulations

Wilderness studies undertaken by the BLM will be conducted in accordance with the BLM planning regulations (43 CFR Part 1601). There are actually three ways to conduct wilderness studies through the BLM planning system—Resource Management Plans (RMP's), Transition Period Management Framework Plans (MFP's), and MFP Amendments. "Management Framework Plan" is the term used for plans generated through BLM's earlier planning system. Since September 6, 1979, when the regulations 43 CFR part 1601 took affect, the BLM has been in transition to "Resource Management Plans."

Since wilderness studies will be conducted in three types of plans, there will be some procedural differences in certain aspects of these studies; pertinent differences are mentioned in this document where applicable. However, while procedural aspects of the plans may differ, wilderness recommendations will be based on the same policy guidance, planning criteria, and quality standards.

1. *Resource Management Plans (RMP's)* are the basic resource management planning documents being developed by the BLM under the new planning regulations (43 CFR Part 1601). The planning process for all RMP's encompasses the environmental analysis and environmental impact statement (EIS) requirements of the National Environmental Policy Act. The resource management planning process includes participation by the public and Federal, State, and local governments, and Indian Tribes; it maximizes use of the best available data; and it includes analysis of alternatives for resources and uses present on the public lands.

2. *Transition Period MFP's* are management framework plans which were in the process of being prepared when the new planning regulations were issued. These ongoing MFP's and their associated EIS's specific to the component programs are scheduled for completion between FY 1980 and FY 1983. Wilderness recommendations developed through transition period MFP's must be treated in a separate wilderness EIS and may not be combined with a grazing EIS or EIS's for other resources. This is necessary so that the implementation of other resource programs will not be delayed awaiting final action on the wilderness recommendations contained in the MFP.

3. *MFP Amendments* for wilderness are provided for in the BLM planning regulations. Amendments to existing MFP's are necessary in cases where an MFP was completed before the wilderness inventory was completed and where the established RMP schedule cannot accommodate the study of certain WSA's early enough to meet the established BLM and Departmental goals for completion of wilderness studies. Resource managers will have the option of recommending the use of one of three types of amendments.

Category I amendments should be utilized when wilderness proposals, based on preliminary analysis do not appear to involve significant impacts. Environomental impact statements are not required when using Category I amendments. An environmental assessment is integrated with the MFP amendment process to conduct the resource analysis and aid in the analysis of alternatives. If analysis during the Category I amendment reveals significant environmental impacts, the proposal moves to a Category II or a Category III amendment.

When conducting Category II amendments, environmental impact statements (EIS's) are required. The EIS's are produced concurrently with the amendment document at the same level at which the planning process takes place. Situations in this category often involve two or more MFP's

In the case of Category III Amendments, the BLM planning regulations do not require an EIS for each MFP Amendment if a subsequent decisionmaking process involves an EIS on amendment conclusions. Therefore, a number of Category III amendments may be combined into one EIS at a districtwide, statewide or regional level.

There are certain instances when one type of amendment may be more appropriate than another. Category I amendments are used when wilderness recommendations do not involve significant impacts. Category II amendments would be useful in areas which need to receive high priority or special attention. Category III amendments could provide more utility when combining amendments on WSA's with similar characteristics or small numbers or acreage. Category III amendments would also be useful for districtwide EIS's or in cases where WSA's overlap planning area or district boundaries.

Wilderness studies conducted through RMP's and MFP amendments will utilize the applicable steps in the resource management planning process in the BLM planning regulations. Wilderness studies conducted through Transition MFP's will follow the steps of the management framework planning process.

The public participation requirements of the Wilderness Act and the National Environmental Policy Act will be satisfied in all wilderness studies. Specific opportunities for public participation during the wilderness study process are outlined in Chapter IV of this document.

B. Scope and Scheduling

1. *Scope of Studies.* BLM wilderness studies will be carried out within the scope of BLM planning areas (which are Resource Areas for RMP's and generally smaller areas for transition MFP's). The scope of MFP amendments may include one or more planning areas. By studying the WSA's and scoping the EIS on a planning area basis, BLM will readily be able to blend wilderness resource considerations into the multiple resource perspective of RMP's, MFP's and MFP amendments, and at the same time provide adequate site-specific information on each WSA.

There may be cases where aggregation of wilderness studies beyond the boundaries of a single planning area is desirable. This may be accomplished through districtwide, multi-district or statewide EIS's. Use of such broad scope studies may be approprate in the following situations:

a. When a WSA overlaps the boundaries of a State, district, resource area, or planning area.

b. When opportunities for joint studies with other Federal agencies exist.

c. When the study schedules for WSA's in neighboring planning area coincide.

d. When Category III Amendments are utilized.

2. *Schedule Development.* In order to minimize both uncertainty regarding land uses and delays in resolving resource conflicts, the Secretary has established several goals for completing wilderness studies. First, all wilderness studies will be completed by the BLM no later than the end of Fiscal Year 1987. Second, wilderness study areas with significant resource conflicts, especially energy conflicts, will be scheduled for early completion within the overall 1987 completion goal. MFP amendments and transition MFP's will be used to achieve these goals to the extent that the schedule for RMP's will not accommodate these goals. The BLM published the final study schedule for all WSA's in the **Federal Register** on November 18, 1981.

Although the BLM is scheduled to complete its field work, wilderness EIS's, and study reports by the end of Fiscal Year 1986, some wilderness recommendations may not be reported to the President until 1991 due to the additional time required for the Geological Survey and the Bureau of Mines to conduct mineral surveys on areas recommended as suitable for wilderness designation.

C. Documentation

1. *Planning System Documents.* Wilderness studies will be conducted within the context of the Bureau's normal resource management planning process. Accordingly, studies information will be recorded as a component of the planning process and documented using standard BLM procedures.

2. *Wilderness Study Report.* At the conclusion of the planning process, a wilderness study report (WSR) will be prepared that addresses the WSA's in a planning area, presenting the results of the study and containing the BLM's wilderness recommendations. The study report will draw from several elements of the study process, including the planning documents, the EIS or EA and the results of public participation. When required, the GS/BM mineral survey reports will be attached to the Wilderness Study Report prior to review by the Assistant Secretary.

This document will be prepared in a consistent format, as appropriate, for each WSA or group of WSA's covered by a study and will be transmitted by the State Director in draft form when he fowards the preliminary wilderness recommendation and preliminary FEIS to the BLM Director for administrative review in preparation for the Secretary's recommendation to the President. Further guidance on the format required for wilderness study reports will be issued to the field in the near future.

A separate wilderness study report will be prepared for each EIS covering all WSA's in the scope of the wilderness study, regardless of whether the study was done in the context of a resource management plan, a transition MFP, or an MFP amendment. In cases where a planning effort results in both suitable and nonsuitable recommendations, the WSR will contain final recommendations and rationales for nonsuitable areas only. The other areas will be labeled as preliminary suitable recommendations, awaiting the results of the GS/BM mineral surveys. Final recommendations and rationales for the preliminary suitable areas will be inserted in the WSR after consideration of the mineral survey reports. The results of the mineral surveys also will be summarized and inserted in the original WSR.

a. *The Wilderness Study Report* (WSR) developed for each planning effort will contain the following information for each individual WSA:

(1) Wilderness recommendation and rationale.

(2) Documentation of the multiple resource analysis.

(3) Application of the planning criteria and the quality standards.

(4) A summary and analysis of comments received during the public hearing and comment period on the preliminary wilderness recommendations specific to each individual WSA.

(5) A map of each area delineating the WSA boundaries and, where appropriate, the recommended wilderness boundaries.

b. *Supporting Documentation*—The WSR will be supported by the following documents, when applicable, which will be available for public review in the WSA's permanent documentation files and sent to the Director to serve as back-up information during administrative review of the study reports and wilderness recommendations.

(1) Preliminary final wilderness EIS or EA (review copy).

(2) Draft plan/Draft EIS or EA containing preliminary wilderness recommendations.

(3) Final plan/final EIS (in the case of RMP's).

(4) Record of public hearing and written comments received during the comment period on the Draft EIS or EA.

(5) Record of Decision on the State Director's preliminary wilderness recommendations (in the context of an RMP, a transition MFP, or an MFP amendment).

c. *Annual State Wilderness Reporting Package*—To facilitate administrative review, the wilderness study reports will be grouped into one annual reporting package in each State and submitted to the Director at the end of each fiscal year. The annual State wilderness reporting package will contain each of the following items:

(1) A *statewide* wilderness status summary describing how all recommendations being transmitted in the state package that fiscal year relate to the existing National Wilderness Preservation System.

(2) Wilderness study reports, by planning effort, covering preliminary

wilderness recommendations submitted in the package.

When such a package is subjected to review by the Director and other Department officials, each WSR will be accompanied by associated wilderness FEIS's or EA's. For areas recommended as suitable for wilderness, the associated mineral survey reports will be attached to any FEIS and WSR after being considered by the Director of the BLM.

3. *Environmental Impact Statements.* Depending on the planning system approach being utilized for the wilderness study one of the three procedures listed below will be employed when environmental impact statements (EIS's) are necessary.

a. *Wilderness Study is Conducted as Component of an RMP:* (1) The draft plan containing preliminary wilderness recommendations and the EIS are prepared as an integrated document and filed by the State Director. The final RMP/EIS is filed by the State Director with wilderness recommendations still in "preliminary recommendation" form.

(2) The final wilderness legislative EIS is prepared based on the final RMP/EIS. The final wilderness EIS is submitted by the State Director, is reviewed and approved by the Director and other Department officials, and then is printed and filed. The FEIS is considered by the Secretary in making his final wilderness recommendations which could differ from the preliminary recommendations contained in the final RMP.

b. *Wilderness Study is Conducted as an MFP Amendment:* (1) The draft EIS is prepared on preliminary wilderness recommendation and filed by State Director.

(2) The final EIS is prepared by State Director, is reviewed and approved by the Director and other Departmental officials, and then is printed and filed. The FEIS is considered by the Secretary in making his final wilderness recommendations.

c. *Wilderness Study is Conducted as Component of a Transition Period MFP:* (1) The final MFP is approved by the State Director with the wilderness recommendations still in preliminary form. The draft EIS on preliminary wilderness recommendation is prepared as a separate document from the Rangeland Management or Timber Management EIS's normally produced. DEIS is prepared and filed at State Director level.

(2) The final wilderness EIS is prepared by State Director, is reviewed and approved by the Director and other Departmental officials, and then is printed and filed. It is considered by the Secretary in making his final wilderness recommendations.

Some wilderness studies and resulting wilderness recommendations will be supported by and considered through an environmental impact statement. This may be accomplished through a single EIS for an individual WSA or by an EIS covering a group of WSA's being studied together and included in the scope of the EIS. While there is no limit on the number of WSA's which may be studied together and included within the scope of an EIS, NEPA standards for adequacy must still be met.

Environmental impact statements may not be necessary when it has been determined there will be no significant change in resource use or management direction and no significant impacts are involved. Even in such cases, an environmental assessment (EA) will be prepared to reach a determination that an EIS is unnecessary (i.e., there are no significant impacts) and to aid in the analysis of alternatives. In addition, the preparation of a wilderness study report, including application of the wilderness planning criteria and quality standards for each WSA, will be necessary for transmittal of the wilderness recommendations to the President.

In cases where an EA has been conducted and it has been determined that an EIS is unnecessary, the involved State Office must submit the EA to the Washington Office for review and concurrence prior to public release. This is required because the EA represents the final environmental document in such cases and must be approved and signed by the Department for transmittal to the President.

d. *Factors Determining Necessary Level of Analysis in Wilderness EIS's.* It is somewhat difficult to provide common guidance on the level of analysis necessary in wilderness EIS's since issue complexity and significance can vary greatly not only between planning areas but also between WSA's within the same planning area. More specific guidance on social and economic analysis in wilderness studies will be provided in the near future, but there are still some basic considerations which should be taken into account in establishing general analysis needs in wilderness planning efforts. The level of analysis necessary to adequately address and analyze potential impacts in wilderness EIS's should be based upon the following factors:

1. Issues identified through the scoping process;

2. Intensity of resource conflicts and the complexity of issues present in each WSA;

3. Additional data needed to respond to the issues identified through the scoping process;

4. Level of impact anticipated by the proposed action (i.e., the suitability or nonsuitability of the WSA(s) for wilderness designation);

5. Degree to which wilderness and related resource issues have been addressed in the current MFP for the area.

e. *Minimum Standards for Necessary Level of Analysis in Wilderness EIS's.* Although it is recognized that the level of analysis required should be flexible in order to accommodate the range of the issues present, there are also some minimum standards that can be followed in developing a wilderness EIS. In addition to the following standards, State Directors may issue supplemental guidance on analysis levels to ensure consistency among Districts within the same State.

The following standards for levels of analysis must be met in all wilderness EIS's:

1. Analysis must be WSA specific. All analysis must be developed and displayed individually for each WSA included in the planning effort. This is required even in cases where WSA's share similar physical characteristics and common issues.

2. Site specific analysis will be necessary whenever partial wilderness alternatives are formulated. Partial wilderness alternatives usually will be based on either the resolution of resource conflicts or wilderness manageability. These alternatives may result in recommending less than the entire WSA for wilderness designation. Therefore, the analysis leading to such recommendations must be specific to geographic locations within the WSA. Other circumstances, such as highly controversial or complex issues, may also necessitate detailed site specific analysis.

3. The level of analysis may vary from WSA to WSA, even within the same planning effort, depending on variations in the complexity of issues between WSA's.

4. The level of analysis should not be affected by the type of planning effort utilized (i.e., RMP, MFP–T, or MFP–A). Whether a wilderness study is conducted as an amendment to an existing MFP or as part of a new RMP effort, the level of analysis should depend upon the issues present and not the type of plan from which the wilderness EIS is developed. In an RMP, the level of wilderness analysis could be dictated by the analysis deemed necessary to respond properly to th

issues identified for all resources in the plan.

D. Reporting Process

The wilderness *study* process ends with the State Director's decision adopting a preliminary wilderness recommendation for submission to the BLM Director. The wilderness *reporting* process represents the roles of the Director, the Secretary of the Interior, and the President in acting upon the State Director's preliminary recommendation. The only wilderness recommendations that can be termed "final" are those adopted by the Secretary and the President.

The final environmental impact statement on the Secretary's wilderness recommendation will be filed by the Department of the Interior, because the Secretary is the responsible official. This differs from the normal EIS filing responsibility in the preparation of a resource management plan, for which the State Director is the responsible official, and therefore files the final EIS on that RMP. In the case of wilderness, the State Director is responsible for a preliminary wilderness recommendation contained in the RMP, but the Secretary is responsible for the final wilderness recommendation and therefore must file the final wilderness EIS on that recommendation.

The study process, in its latter stages, meshes with the early stages of the reporting process through consultation between the State Director and the Director before the State Director takes action. The State Director's preliminary wilderness recommendations will be grouped into an annual reporting package for transmittal to the Director.

The BLM's proposed wilderness reporting process is described in summary below. This reporting process includes the administrative reviews that will be conducted by the BLM Director and the Department of the Interior, leading to recommendations by the Secretary to the President as to the suitability or nonsuitability of each WSA for preservation as wilderness. The same basic reporting process will be used regardless of the planning approach used for a particular wilderness study—A resource management plan, a transition period management framework plan (MFP), or an amendment to an existing MFP. In the following summary, the term "plan" will refer to all three approaches, except where otherwise noted. A flow chart depicting the reporting process is displayed in Figure 2.

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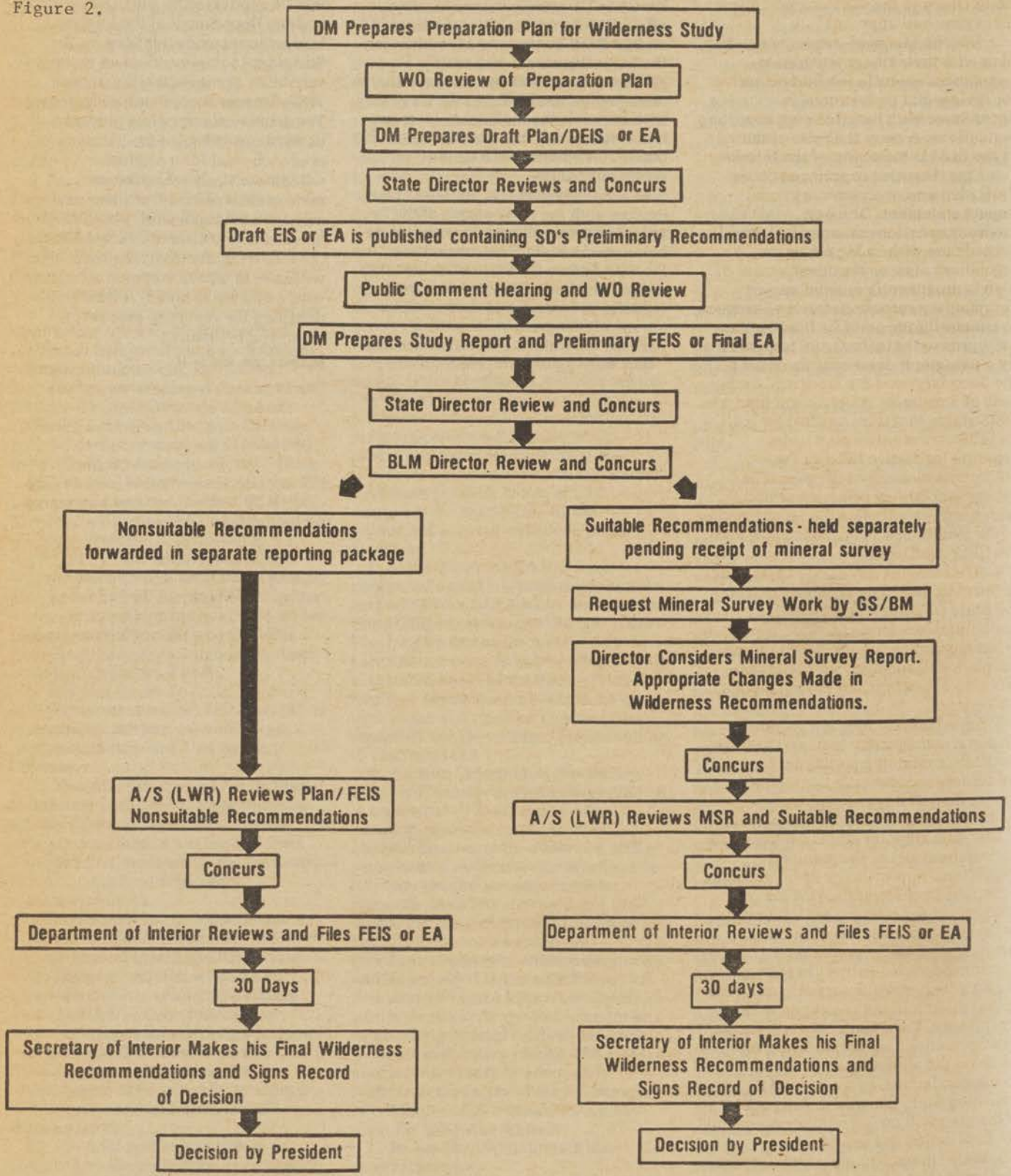
BLM WILDERNESS REVIEW REPORTING PROCESS

Figure 2.



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1. District Manager prepares the preparation plan for the wilderness study and it is submitted through the State Office to the Washington Office for review and approval.

2. District Manager transmits the draft plan with preliminary wilderness recommendations to the State Director for review and concurrence in accordance with the BLM planning regulations. A copy is also transmitted to the BLM Director for informal review.

3. State Director concurs, and files draft plan and draft environmental impact statement (DEIS) or environmental assessment (EA), in accordance with BLM planning regulations. The wilderness element of plan is prominently labeled as "preliminary recommendations—subject to change during administrative review" (or words to that effect), accompanied by a paragraph describing the roles of the Secretary, and the President. In the case of a resource management plan, the DEIS states that it is the draft for both an FEIS on the entire plan and a separate legislative FEIS on the wilderness element of the plan. The subsequent 60-day comment period, with hearings, satisfies the requirements of the Wilderness Act, section 3(d) and the CEQ regulations.

4. After making any needed revisions in the plan, based on public comment, the State Director submits the preliminary wilderness recommendation, preliminary FEIS on the plan, and summary of wilderness-related public comment to the Director for review.

5. State Director files the proposed resource management plan and FEIS on the RMP, containing preliminary wilderness recommendations. Not earlier than 30 days after this, the District Manager, with the concurrence of the State Director and consistent with the requirements of the planning regulations, approves the RMP and signs Record of Decision (ROD) for all elements of the plan except wilderness. In these documents, the wilderness element is labeled, "preliminary recommendation—subject to change during administrative review" (or words to that effect). In the case of an MFP amendment, the amendment will not be approved until final action has been taken on the wilderness recommendations. In the case of a transition MFP, the wilderness portion of the plan will not be implemented until the final action has been taken.

6. State Director prepares wilderness study report and the wilderness preliminary FEIS. State Director transmits the wilderness study reports to the Director in an annual reporting package.

7. The BLM Director reviews wilderness study report/PFEIS ("review copy"). At this point, the preliminary recommendations for suitable and nonsuitable areas are separated. Because mineral surveys must be conducted for suitable recommendations, these recommendations will be held by the Director until mineral survey work is completed. The same basic wilderness study report will be used for both "nonsuitable" and "suitable" packages, with different recommendations inserted as appropriate. The following describes the two separate processes used by the Director for the reporting of "suitable" and "nonsuitable" recommendations.

a. *Preliminary Recommendation is "Nonsuitable".* The Director reviews the Wilderness Study Report and the preliminary FEIS. If the nonsuitable recommendations are acceptable, the package is transmitted to the Assistant Secretary for Land and Water Resources. Following Assistant Secretary review and approval, the document is forwarded to the Secretary. Any preliminary "suitable" recommendations contained in the EIS are clearly labeled "preliminary recommendation, pending completion of mineral surveys" or similar language. At this point, the Director and Assistant Secretary are officially making *only* nonsuitable recommendations. The Secretary's recommendations to the President in the Record of Decision will cover *only* the nonsuitable lands addressed in the FEIS.

b. *Preliminary Recommendation is "Suitable".* After review of the study report/preliminary FEIS, the Director requests mineral surveys by USGS/BM only on lands recommended as suitable. These suitable recommendations are then held by the Director until mineral survey reports are available. When the mineral survey reports are completed, the State Director reviews the original "suitable" recommendations in light of the mineral survey results. If the State Director concurs with the original recommendations, he forwards them along with the mineral survey reports to the Director for review and concurrence. Recommendations and mineral surveys are then transmitted to the Assistant Secretary for Land and Water Resources and then to the Secretary of the Interior.

However, if the State Director finds the "suitable" recommendations inappropriate due to new information acquired through the mineral survey, the recommendations are returned to the District Manager. At that time, the District Manager is responsible for preparing a revised recommendation and, if necessary, an EIS Supplement analyzing and documenting how the new information affects the areas' suitability for wilderness designation. The revised recommendations and Wilderness Study Report, and the EIS supplement if necessary, would be transmitted for review and concurrence by the State Director, Director and Assistant Secretary.

8. The Wilderness study report/FEIS ("review copy") is reviewed by Department of the Interior. The Department may consult the Office of Management and Budget at this stage, with respect to interagency review of the proposed wilderness recommendations currently under review.

9. The Department files the wilderness FEIS. The BLM announces that the FEIS has been filed; public can obtain copies.

10. The Secretary signs Record of Decision and transmits his recommendation with wilderness study report/FEIS to the President.

11. The President transmits his recommendation with wilderness study report/FEIS to Congress and announces it to the public.

E. Decision Roles and Responsibilities

The BLM management officials are responsible for each of the following actions in their respective areas of jurisdiction during the wilderness study process.

District Manager

1. Conducts the wilderness study, develops wilderness recommendations, and prepares the preparation plan and the Draft plan/DEIS or EA, regardless of whether study was part of a Resource Management Plan (RMP), Management Framework (MFP), or MFP amendment.

2. Ensures that the required formal public hearings are held on the Draft plan/DEIS or EA.

3. Ensures that wilderness studies are conducted in accordance with the BLM planning regulations and other BLM instructions. This includes providing opportunities for public involvement in the planning process.

4. Prepares the preliminary wilderness FEIS or final EA, (review copy), wilderness study report, EIS supplement if necessary, and all other required documents. Maintains study records and the permanent documentation file for each area, and ensures availability for public review.

State Director

1. Provides State Director guidance to the District Managers and any

additional appropriate guidance, as indicated in the BLM planning regulations, for wilderness studies.

2. Prepares and updates as necessary the Public Participation Plan to guide public involvement in wilderness studies in the State.

3. Reviews and approves District Manager's draft of preliminary wilderness recommendations and any DEIS.

4. Files draft plan and DEIS for public comment. Forwards a copy of the preliminary recommendations and DEIS or EA to Director for review concurrent with the public comment period on the DEIS.

5. After revision, forwards preliminary wilderness recommendation and any preliminary FEIS or final EA (review copy) on the plan with related public comment to Director for review.

6. Files the resource management plan and FEIS on the plan containing preliminary wilderness recommendation. Signs Record of Decision on the RMP. In cases of MFP amendments the State Director does not approve the plan until after final action is taken on the wilderness recommendations. In the case of transition MFP's, the State Director may not implement the wilderness portion of the plan until final action is taken.

7. Reviews and approves the wilderness study reports, any associated preliminary wilderness FEIS's or final EA's, and prepares the statewide wilderness status summary. Forwards these documents to the Director for review in an annual state wilderness reporting package.

8. Prints final wilderness study report and any wilderness FEIS or final EA.

The Director

1. Provides guidance in the form of BLM policy and procedures for wilderness studies.

2. Establishes Bureauwide schedule for wilderness studies.

3. Reviews and comments on preliminary wilderness recommendations in draft plan and any DEIS or EA during the public comment period on the DEIS or EA.

4. Reviews preliminary wilderness recommendations in RMP/FEIS, and related public comment before filing of RMP/FEIS by State Director.

5. Reviews wilderness study report and preliminary wilderness FEIS or EA's. Makes final Bureau recommendations on wilderness suitability and approves associated documents.

The Department

1. Following the Director's decision, all wilderness study reports, EIS's or EA's, and other attached documents will be forwarded for review and approval by the Assistant Secretary for Land and Water Resources.

2. Upon approval of these documents the Assistant Secretary transmits his wilderness suitability recommendations for consideration by the Department.

3. The Department then files any FEIS or final EA. The Secretary makes his final recommendations on wilderness suitability, approves the final report documents and signs the Record of Decision.

4. Finally, the Secretary transmits his recommendations, with the final reports/FEIS's or final EA's, to the President.

The President

1. The President arrives at his final recommendations. A public announcement is made at that time.

F. Role of Mineral Survey Report

Section 603 (a) of the Federal Land Policy and Management Act (FLPMA) requires that "prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the Geological Survey (GS) and the Bureau of Mines (BM) to determine the mineral values, if any, that may be present in such areas." This provision of FLPMA requires GS/BM mineral surveys only for those areas which are being recommended to the President and Congress as *suitable* for wilderness designation. Mineral surveys by the Geological Survey and Bureau of Mines are not required for areas recommended as nonsuitable for wilderness designation.

Mineral surveys will be requested from GS/BM after the Director reviews the wilderness study report/preliminary FEIS or EA transmitted to him by the State Director. Upon completion of the mineral survey report, copies will be made available to the public as well as the BLM. The results of these mineral surveys will be fully considered by the State Directors prior to resubmitting their recommendation on the "preliminary suitable" areas. The BLM Director will also consider the results of the mineral surveys prior to concurring in the State Directors' recommendations and transmitting them to the Assistant Secretary for Land and Water Resources.

G. Joint Studies

1. *Within BLM*—There are numerous WSA's which cross BLM administrative boundaries—between resource areas, between Districts, or between States. The basis for developing joint wilderness studies within BLM involves: (a) Opportunities for schedule coordination; (b) the type of planning effort in which the studies are contained (i.e., RMP, transition MFP, or MFP amendment), (c) the proportion of the WSA's located in each planning area, and (d) opportunities to consolidate studies into a single EIS through the use of MFP amendments.

The above factors will influence which of the following options is chosen for conducting joint wilderness studies between BLM administrative units:

a. Development of a single EIS or EA to cover each of the planning areas into which the WSA's extend. This alternative would be appropriate when utilizing an MFP amendment.

b. Consider the boundary-crossing WSA's in the EIS or EA for only one of the administrative units in which it is located. In this case, the other DM or SD would concur in the wilderness recommendations developed in the plan/EIS for the unit having the lead responsibility for those particular WSA's.

c. Conduct two EIS or EA efforts concurrently for the planning areas into which the WSA's extend. In this case, a joint recommendation would be developed for the all boundary-crossing WSA's, but each of the plan/EIS's would cover only those portions of the WSA's located within its own planning area boundaries.

State Directors are responsible for ensuring effective coordination of wilderness studies on those WSA's which overlap administrative boundaries. The type of joint study to be conducted must be mutually agreed upon by all District Managers and/or State Directors involved, on a case-by-case basis. Inventory data collection and analysis, public comment analysis, and wilderness recommendations should be consistent between administrative units. Written memorandums of Understanding (MOU's) may be developed to ensure proper coordination procedures. The use of MOU's is encouraged particularly in cases which involve WSA's crossing interstate boundaries.

2. *Joint Studies with Other Agencies.* Opportunities also exist to conduct joint studies in cases where BLM wilderness study areas are contiguous to areas being considered for wilderness designation by other Federal or State agencies.

This situation seems to occur most frequently in cases involving BLM

WSA's and U.S. Forest Service (USFS) "further planning" areas. These "further planning" areas were identified during the USFS's RARE II wilderness review process as roadless areas to be considered for all uses, including wilderness, during the development of USFS land management plans. A cooperative agreement has been developed to facilitate joint wilderness studies by BLM and USFS where study lands administered by the two agencies are contiguous. The BLM District Managers and USFS Forest Supervisors will collaborate in preparing preliminary wilderness recommendations and study reports, with results to be forwarded jointly or independently as practicable and agreed upon. The cooperative agreement will contain criteria for determining the lead agency in a joint study and will outline the respective responsibilities for both the lead agency and the cooperating agency.

Where opportunities for joint studies with agencies other than the USFS exist (i.e., the National Park Service, U.S. Fish and Wildlife Service, and State agencies), BLM State Directors and District Managers are encouraged to initiate discussions to develop coordinated wilderness studies. The BLM Washington Office will work with the National Park Service and U.S. Fish and Wildlife Service to develop cooperative agreements for possible joint wilderness studies involving those agencies.

3. *BLM Studies Involving Existing or Proposed Wilderness Areas Administered by Other Federal Agencies.* In cases where BLM wilderness study areas are contiguous to lands administered by other Federal agencies which are either designated wilderness areas or have been proposed by the President for designation as wilderness, the BLM will conduct a wilderness study under the policies and criteria in this doucment, and the following additional factors will be considered and documented in the wilderness study report:

a. In cases where the contiguous Federal lands are proposed as wilderness but have not yet been designated, determine whether the WSA would be a viable independent candidate for designation as wilderness if Congress does not designate the contiguous lands. A major point for consideration is the manageability of the BLM portion.

b. Regarding the management of the WSA if it is designated as wilderness, determine whether the BLM portion could be more effectively managed as wilderness if the management responsibility were transfered to the agency which administers the contiguous existing or proposed wilderness area. District Managers will cooperate with their counterparts in the other agencies to develop a response to this factor. Recommendations which contemplate transfer of administration of the public lands, if designated as wilderness, should clearly identify this point and document it in the narrative for Wilderness Planning Criterion No. 2. (manageability) and in the wilderness study report.

H. Formulation of Alternatives

1. *Basic Principles.* This section provides general guidelines on the formulation of alternatives to consider wilderness in the planning process.

The basic guidance available on the formulation of alternatives appears in the Bureau planning regulations (43 CFR Part 1601) and the regulations of the Council on Environmental Quality (40 CFR 1502.14). As in all BLM resource management planning, alternatives for wilderness shall provide a range of choices, from those favoring resource protection to those favoring resource production. There must always be a "no-action" alternative proposing continuation of present levels of resource use and management.

2. *Range of Alternatives to be Addressed.* The following alternatives should be considered in wilderness studies. These should be applied either individually in single WSA studies or collectively when more than one WSA is included within the scope of a study. They should be developed as separate alternatives in transition MFP/EIS's and MFP Amendment/EIS's but integrated into the overall plan alternatives in an RMP/EIS.

a. *All Wilderness.* This alternative represents the maximum possible acreage that could be recommended suitable for wilderness designation. This could involve either a single WSA in its entirety or all WSA's included in the planning area under study.

b. *No Wilderness.* This alternative represents the no-wilderness option and could involve recommending "nonsuitable" for either a single WSA in its entirety or all WSA's in a study. When the wilderness study is done as part of a resource management plan, the "no-wilderness" alternative may include a number of subalternatives which provide a range of options from those favoring resource protection to those favoring resource production. The subalternative which is selected will be a key determinant in assessing the probable impacts to the wilderness values of an area, as required by Quality Standard No. 3—*Impacts of Nondesignation on Wilderness Values,* which is explained in detail in Section II.E (2). In case of transition MFP's, the alternative for the use of the area under study will be considered in the MFP-Step II recommendation for wilderness. In MFP Amendments, "No Wilderness," alternatives other than the "No-Action" alternative may be developed if they are are necessitated by new information generated as a result of the wilderness study or new policies adopted (e.g., areas of critical environmental concern) since the time when the existing MFP was completed.

c. *"No Action".* A "no-action" alternative must be formulated and assessed for each WSA. This alternative proposes continuation of present levels of resource use and management, and represents the most likely condition expected to exist in the future if the current resource use and management direction (without regard to the interim management policy for lands under wilderness review) were to continue as documented in the existing MFP and if the area were not designated as wilderness. There may be certain instances where the "no action" and "no wilderness" alternatives are the same because maintaining present levels of resource use and management may be the preferred alternative resulting from the planning effort. In such cases, these two alternatives may be combined to avoid duplication in analyzing the effects of alternatives.

d. *Partial Wilderness.* This alternative or group of alternatives represents the range of possible suitable or nonsuitable recommendations available between the "all wilderness" and the "no wilderness" options. Depending on the issues involved and the complexity of the study, certain options may be treated as subalternatives. The use of partial wilderness alternatives should be considered when formulating alternatives for wilderness in an EIS. However, in some cases, where there are no conflicts to resolve and no manageability problems, the use of partial wilderness alternatives may not be appropriate or necessary.

When an individual WSA is being reviewed, these alternatives will consider how the area recommended for wilderness might be less than the WSA boundary in order to allow for resource tradeoffs or manageability considerations. When more than one WSA is included in a single study, the "partial wilderness" alternative(s) allow for different combinations or mixes of areas to be recommended suitable and nonsuitable. In such cases, care must be taken to ensure consideration not only

of various mixes of entire areas being recommended suitable or nonsuitable but also of various approaches to recommending less than the entire area of each of the WSA's for wilderness in light of resource conflicts, manageability considerations or other relevant factors. Use of subalternatives is especially appropriate in these situations.

3. *Development of Alternatives Involving Less Than Entire WSA's.* There appear to be two general cases when it may be appropriate to consider recommending less than entire WSA's for wilderness: (1) Resolution of conflicts and (2) manageability of wilderness. Any such instances will require the development of either an individual alternative or subalternative(s). Such situations must be documented in preparing the plan and the wilderness study report.

Slight adjustments or refinements of the original WSA boundaries based on more accurate delineations being made during the detailed wilderness study may not require the development of separate alternatives if the adjustments constitute minor boundary modifications. However, when such boundary modifications are made, they will be documented when describing the alternatives in the plan/EIS and the rationale for the adjustment must be explained in the plan/EIS and the wilderness study report. As specified in Quality Standard No. 3, an alternative use or uses for the non-WSA portion of the WSA will be specified and the impacts of these uses will be assessed in the EIS.

a. *Conflict Resolutions.* Alternatives involving less than an entire WSA are based on an overall objective of resolving existing or potential conflicts between wilderness and certain nonwilderness uses. For example, a conflict resolution alternative might be considered where a certain portion of a WSA has been identified as containing a known geothermal resource. This portion of the WSA might then be recommended as nonsuitable for wilderness designation, while the remainder of the WSA might still be eligible for wilderness.

b. *Wilderness Manageability.* In some cases, it may be appropriate to consider recommending less than an entire WSA as suitable for wilderness based on a determination that some portion of the WSA cannot be managed effectively as wilderness over the long run. Again, this is a case where treatment of such matters as individual alternatives or subalternatives will enable an analysis of impacts and allow for public review.

4. *Development of Alternatives.* Regardless of the scope of any wilderness study, the development of alternatives is a critical early function. Latitude and flexibility exist in formulating the alternatives to be studied, but care must be taken to assure compliance with the requirements and intent of both the CEQ regulations and the BLM planning regulations.

Particular attention must be given to development of alternatives when more than one WSA is included in the scope of a study. While it may be impossible to array all possible combinations of suitable and nonsuitable recommendations for any group of WSA's, a reasonable number of examples, covering the full spectrum of alternatives, should be presented to provide a clear basis for choice among options by the decisionmaker and the public. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and make use of common sense. The alternatives should also reflect public needs, concerns and opinions. Whatever set of alternatives is selected, it should be responsive to the public participation required both by the issue identification step in the Bureau planning system and by the NEPA scoping process. In addition, section 1502.14 of the CEQ regulations requires that EIS's include a brief discussion of the alternatives which were eliminated from detailed study and the reasons for their elimination. In analyzing the effects of various alternatives, not only the impacts of designation or nondesignation of individual WSA's, but also the cumulative effects of composite alternatives involving all of the WSA's in a planning effort should also be assessed. (See § 1508.25 (a) and (c)).

Figures 3 A and B illustrate two examples of how alternatives may be presented and analyzed in a wilderness EIS. In the examples, the EIS addresses the question of wilderness designation for five WSA's. It should be understood that these charts merely represent examples of how alternatives for wilderness may be structured. There are likely to be variations of these approaches depending on whether the wilderness EIS is developed as part of an RMP, a transition MFP or an MFP amendment.

Figure 3A represents the second step of a two-step process in alternative formulations. In the first step, partial wilderness alternatives were considered individually for each WSA, along with the All Wilderness, No Action, and/or No Wilderness alternatives. In the second step, various combinations of all or part or none of each WSA were grouped together to form composite alternatives addressing each of the WSA's in the EIS. One of these would then be selected as the preferred alternative.

FIGURE 3A—FORMULATION OF WILDERNESS ALTERNATIVES, WILDERNESS STUDY AREA

Alternatives	1	2	3	4	5
All Wilderness	All	All	All	All	All.
Partial, Protection	All	None	Part	All	All.
Partial, Balance	Part	None	Part	All	Part.
Partial, Production	Part	None	None	Part	Part.
No Action	None	None	None	None	None.
No Wilderness	None	None	None	None	None.

Another possible means of arraying alternatives for wilderness study areas would be to develop individual alternatives for each WSA with a preferred alternative identified for each WSA as shown in Figure 3B. The composite of these individual preferred alternatives would then be the draft EIS preferred alternative. This approach can provide some flexibility in selecting the preferred alternatives especially in the event of administrative changes in the case of final wilderness EIS's.

FIGURE 3B—FORMULATION OF WILDERNESS ALTERNATIVES

WSA No.	Alternatives				
1	*All*	Partial, manageability	Partial, conflict resolution	No action	No wilderness.
2	All	Partial, manageability		*No action*	
3	All		*Partial, conflict resolution*	No action	No wilderness.
4	*All*	Partial, manageability	Partial, conflict resolution	No action	
5	All	Partial, manageability	Partial, conflict resolution	No action	*No wilderness.*

*The italic alternatives together represent the proposed action for the EIS.

Chapter IV. Public Involvement

A. General

Opportunities will be provided for public participation in wilderness studies, in accordance with the BLM planning regulations and provisions of the Wilderness Act of 1964. The Bureau of Land Management considers public participation to be an essential element in every wilderness study. The following wilderness quality standard appears in Chapter II of this document:

Quality Standard No. 4—*Public Comment:*

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM wilderness study process will consider comments received from interested and affected publics at all levels—local, State, regional, and national. Wilderness recommendations will not be based exclusively on a vote-counting majority rule system. The BLM will develop its recommendations by considering public comment in conjunction with an analysis of a wilderness study area's multiple resource and social and economic values and uses.

To obtain the views of the public for consideration under this criterion, BLM will conduct public participation activities, which may include published and mailed requests for written comments, surveys, public meetings, public hearings, conferences, seminars, workshops, open houses, tours, or similar events. Detailed public participation plans will be developed by each State Director.

Public participation opportunities in each wilderness study must satisfy the requirements of the BLM planning regulations (43 CFR Part 1601), which provide for participation at several stages in the planning process. They must also satisfy the requirements of the council on Environmental Quality (CEQ) regulations (430 CFR 1501.7 and 1506.6) with respect to environmental impact statements. In addition, they must satisfy section 3(d) of the Wilderness Act, which provides for a public hearing or hearings, the results of which must be made available to the Secretary and the Preident when they make their recommendations on the suitability or nonsuitability of an area for wilderness designation.

The public will be notified far enough in advance of any of these activities to allow for effective and meaningful participation. The Wilderness Act requires that at least 30 days notice be given to the public prior to the public hearing required by section 3(d) of the Act. The Act also requires at least 30 days after the hearing for the public to submit their views on the preliminary recommendation. This means that plans involving wilderness will require at least 60 days for review of the draft plan and draft EIS or EA.

Aside from these formal requirements, BLM is committed to public participation as an effective tool in conducting wilderness studies. During the earliest stage in a wilderness study, the emphasis will be on identification of issues which the public believes should be considered with respect to a particular wilderness study area. Knowing what is of special concern to the public in each area will enable BLM to analyze those issues in sufficient depth during the wilderness study.

During the early stages of a study, BLM will also be seeking information from the public about the values and resources in the wilderness study area, to augment BLM's current resource information, For example, the public, including the minerals industry, will be invited to submit information about the area's mineral values.

During the later stages of a wilderness study, the emphasis shifts to the central question to be addressed in BLM's wilderness recommendation—is the area suitable for wilderness designation, or more suitable for other resource uses? The results of public participation will provide a sound basis for this recommendation.

The BLM State Directors and District Managers are encouraged to provide such public participation opportunities as may be appropriate in a particular wilderness study. Table 1 presents the mandatory opportunities for public involvement in wilderness studies.

TABLE 1.—MANDATORY OPPORTUNITIES FOR PUBLIC INVOLVEMENT IN WILDERNESS STUDIES

Opportunity	Required by		
	BLM planning regulations	CEQ regulations	Wilderness Act
1. BLM publishes a notice of intent to conduct a plan/EIS or EA involving wilderness.	X	X	
2. Scoping	X	X	
3. Release of draft plan/DEIS or EA containing preliminary wilderness recommendations.	X	X	
4. Public hearing on draft plan/DEIS or EA containing preliminary wilderness recommendations.			X.
5. Release of proposed plan/FEIS containing preliminary wilderness recommendations (RMP's only).	X	X	
6. Filing of final wilderness legislative EIS or final EA.	X		

B. State and Local Governments

In recognition of their special expertise with respect to the social and economic effects of resource management decisions, State and local governments will have opportunities to participate effectively in BLM wilderness studies. This applies both to legislative bodies such as State legislatures and county boards, and to executve officials and agencies such as Governors and State and county agencies.

To allow these governments sufficient time to deliberate and adopt official recommendations for consideration by the BLM, State Directors and District Managers will take care to notify State and local governments as to when wilderness studies are scheduled to begin, and as to the timing of steps in the study process, so the governments will be prepared to participate at the proper times.

Certain formal intergovernmental coordination steps are required by the BLM planning regulations and by the Wilderness Act. The BLM also intends to coordinate with State and local governments informally so as to obtain the maximum information for use by BLM in developing the preliminary wilderness recommendations. The formal, mandatory coordination steps are described below:

1. Every year BLM publishes a schedule of resource management planning efforts due to start in the next 3 fiscal years. The State Director transmits this information to State and local governments.

2. Before starting a wilderness study, the BLM District Manager will send a notice of intent (as prescribed by BLM Planning Regulations 43 CFR Part 1601) and general schedule of expected steps in the study process to State and areawide A–95 clearinghouses, to heads of county boards and other local governments affected, to the presiding officers of the State legislature, and to any other State or local government bodies that have asked to receive such notices.

3. As the actual study work begins, the District Manager consults State and local governments as to any relevant land use plans, policies, or resolutions, so these can be considered as early as possible in the study process.

4. State and local governments will be invited to participate in the scoping and issues identification process.

5. Data submitted by State and local governments should be used by BLM in preparing the following materials: (a) Socio-economic analysis, (b) draft and

final environmental impact statements (EIS's), and (c) evaluation of the effects of the alternatives. There is no separate comment period for submission of this information; it can be submitted at any time while these materials are in preparation. The general schedule referred to in step 2 above will show the target dates for completion of these materials.

6. The BLM will release a draft plan and draft EIS (or draft plan amendment and draft EIS) containing preliminary wilderness recommendations; this will be sent to the State and local governments, which will have 60 days to respond with written comments, as well as opportunities to present comments in a public hearing or hearings, which are required by the Wilderness Act. Affected State and local governments must be notified of the hearings at least 30 days in advance, and must have at least 30 days after the hearing to submit their views.

7. The views submitted in step 6 above will be considered by the State Director in arriving at the revised preliminary wilderness recommendation which he sends to the BLM Director. The views of State and local governments will be transmitted verbatim—accompanying the BLM wilderness recommendation—to the Director, the Secretary, the President, and ultimately to Congress for consideration as decisions are made on the results of the wilderness study.

If a State or local government notifies the BLM in writing that the preliminary wilderness recommendation or any specific part of it is not consistent with that government's officially approved and adopted resource related plans, or with that government's policies and programs, BLM will respond to this comment in the wilderness study report, documenting the resolution of the consistency issue. The applicable policy with respect to officially approved and adopted resource-related plans appears as Quality Standard No. 6, Consistent with Other Plans.

The BLM will give due consideration to all views and information submitted by State and local governments, with greatest weight given to submissions representing an official action of a State or local government body, as contrasted to an expression by an individual member of such a body. For instance, a resolution adopted by a State legislature will be considered to represent the legislature's official position on the matter. On the other hand, if an individual member of the legislature submits comments, it will not be assumed that these comments represent the legislature's position, unless that member was officially authorized to file comments on behalf of the body.

Appendix A.—Section 603 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579)

Section 603. (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for presentation as wilderness: Provided, that prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the U.S. Geological Survey and the Bureau of Mines to determine the mineral values if any, that may be present in such areas: Provided further, that the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedures specified in section 3(d) of the Wilderness Act.

(b) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and with a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was conducted on the date of approval of this Act: Provided, that, in managing the public land the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 204 of this Act for reasons other than the preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, and mineral development, access, exchange of lands, and ingress for mining claimants.

Appendix B.—Excerpts from the Wilderness Act of September 3, 1964 (Pub. L. 88–577)

Section 2(c): A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the force of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, or historical value.

Section 3(d): *Suitability.* (d)(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness: Publication in **Federal Register.** (A) give such public notice of the proposed action as they deem appropriate, including publication in the **Federal Register** and in a newspaper having general circulation in the area or areas in the vicinity of the affected land; *Hearings.* (B) hold a public hearing or hearings at a location or locations

convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: Provided, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) At least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

Appendix C: Glossary

The following are definitions for terms commonly used in the BLM wilderness study process:

Management Framework Plan (MFP): The Bureau's basic planning decision document prior to the adoption of a new planning process in 1979, in which the decision document is a Resource Management Plan (RMP).

MFP Amendment: An amendment to a Management Framework Plan is initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances, or an applicant's proposed action which may result in a significant change in a portion of the approved plan.

Multiple Resource Values and Uses: The present and potential uses of the various resources administered through multiple use management on the public lands and any public values associated with such uses.

Multiple Use: "* * * the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." (From section 103, FLPMA.)

Naturalness: Refers to an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." (From section 2(c), Wilderness Act.)

Outstanding: 1. Standing out among others of its kind; conspicuous; prominent; 2. superior to others of its kind; distinguished; excellent.

Planning Area: The area for which resource management plans are prepared and maintained. In most instances, it is the same as the resource area, which is a geographic portion of a BLM district, under supervision of an area manager.

Planning Criteria: The factors used to guide development of the resource management plan, or revision, to ensure that it is tailored to the issue previously identified and to ensure that unnecessary data collection and analyses are avoided. Planning criteria are developed to guide the collection and use of inventory data and information, the analysis of the management situation, the design and formulation of alternatives, the estimation of the effects of alternatives, the evaluation of alternatives, and the selection of the preferred alternative.

Population Center: A Standard Metropolitan Statistical Area (SMSA) which has a population of 100,000 or greater. An SMSA is a county which contains at least one city of 50,000 inhabitants or more plus as many adjacent counties as are metropolitan in character and are socially integrated with that central city or cities.

Preliminary Wilderness Recommendation: Refers to a wilderness recommendation at any stage prior to the time when the Secretary of the Interior reports his recommendation to the President. Until the Secretary acts, the recommendation is "preliminary" because it is subject to change during administrative review.

Primitive and Unconfined Recreation: Nonmotorized and nondeveloped types of outdoor recreational activities.

Resource Management Plan (RMP): The basic decision document of BLM's resource management planning process, used to establish allocation and coordination among uses for the various resources within a Resource Area. An RMP is a "land-use plan" prescribed by Section 202 of the Federal Land Policy and Management Act. RMP regulations appear at 43 CFR Part 1601. (Refer to definition of Management Framework Plan.)

SMSA: Standard Metropolitan Statistical Area—See definition under "Population Center."

Solitude: 1. The state of being alone or remote from habitations; isolation. 2. A lonely, unfrequented, or secluded place.

Suitability: As used in the Wilderness Act and in the Federal Land Policy and Management Act, refers to a recommendation by the Secretary of the Interior or the Secretary of Agriculture that certain Federal lands satisfy the definition of wilderness in the Wilderness Act and have been found appropriate for designation as wilderness on the basis of an analysis of the existing and potential uses of the land.

Substantially Unnoticeable: Refers to something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change. An example of the first would be a few minor dams or abandoned mine buildings that are widely scattered over a large area, so that they are an inconspicuous part of the scene. Serious intrusions of this kind, or many of them, may preclude inclusion of the land in a wilderness study area. An example of the second would be an old juniper control project that has grown up to a natural appearance, the old fallen trees largely decomposed.

Wilderness: The definition contained in section 2(c) of the Wilderness Act of 1964 (78 Stat. 891). (See Appendix B for its full text.)

Wilderness Area: An area formally designated by Act of Congress as part of the National Wilderness Preservation System.

Wilderness Characteristics: The definition contained in section 2(c) of the Wilderness Act of 1964 (78 Stat. 891). (See Appendix B for its full text.)

Wilderness Inventory: An evaluation of the public lands in the form of a written description and map showing those lands that meet the wilderness

criteria as established under section 603(a) of FLPMA and section 2(c) of the Wilderness Act, which will be referred to as Wilderness Study Areas (WSA).

Wilderness Management: The management of human use and influence on lands which have been designed by Act of Congress as wilderness areas.

Wilderness Program: Term used to describe all wilderness activities of the Bureau of Land Management including identification, management, and administrative functions.

Wilderness Recommendations: A recommendation by the Bureau of Land Management, the Secretary of the Interior, or the President, with respect to an area's suitability or nonsuitability for preservation as wilderness.

Wilderness Reporting: The process of preparing the reports containing wilderness recommendations on wilderness study areas and transmitting those reports to the Secretary of the Interior, the President, and Congress.

Wilderness Review: The term used to cover the entire wilderness inventory, study, and reporting phases of the wilderness program of the Bureau of Land Management.

Wilderness Study Area (WSA): A roadless area or island that has been inventoried and found to have wilderness characteristics as described in section 603 of FLPMA and section 2(c) of the Wilderness Act of 1964 (78 Stat. 891).

Wilderness Study: The process outlined in these guidelines which specifies how each wilderness study area must be studied through the BLM resource management planning system, analyzing all resources, values and uses within the WSA to determine whether the area will be recommended as suitable or nonsuitable for wilderness designation.

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Part III

Department of Agriculture

Agricultural Marketing Service

Milk in the Alabama-West Florida Marketing Area; Decision on a Proposed Marketing Agreement and Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1093 (Tentative)

[Docket No. AO-386]

Milk in the Alabama-West Florida Marketing Area; Decision on a Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts a Federal milk order for the Alabama-West Florida marketing area. Associated Milk Producers, Inc., a dairy farmer cooperative, proposed the new milk order. The proposal was considered at a public hearing held June 23-July 2, 1980. On the basis of the evidence obtained at that hearing, the Department has concluded that a Federal milk order is needed to provide stable and orderly conditions for the marketing of milk in the proposed area. A referendum will be conducted to determine whether producers who supplied milk for the proposed area during October 1981 favor the issuance of the order.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202/447-4829.

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 May 20, 1980; published May 23, 1980 (45 FR 35168).

Recommended Decision: Issued September 8, 1981; published September 11, 1981 (46 FR 45542).

Extension of Time: Issued October 9, 1981; published October 15, 1981 (46 FR 50804).

Preliminary Statement

A public hearing was held upon a proposed marketing agreement and order regulating the handling of milk in the Alabama-West Florida marketing area. 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 Montgomery, Alabama, on June 23–July 2, 1980. Notice of such hearing was issued on May 20, 1980.

Upon the basis of the evidence introduced at the hearing and the record thereof; the Deputy Administrator, Marketing Program Operations, on September 8, 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. Under the subheading *"3(a). Handlers to be regulated and milk to be priced and pooled.", "Pool plant."*, two new paragraphs are added after paragraph 17, three new paragraphs are added after paragraph 18, two new paragraphs are added after paragraph 25, three new paragraphs are added after paragraph 41, two new paragraphs are added after paragraph 43, five new paragraphs are added after paragraph 44, paragraph 56 is revised, and five new paragraphs are added after paragraph 56.

2. Under the subheading *"3(a). Handlers to be regulated and milk to be priced and pooled.", "Nonpool plant."* paragraph 5 is revised and a new paragraph is added after paragraph 5.

3. Under the subheading *"3(a). Handlers to be regulated and milk to be priced and pooled.", "Producer milk."*, two new paragraphs are added after paragraph 15, and seven new paragraphs are added after paragraph 21.

4. Under the subheading *"3(c). Pricing of milk", "Class I price and in-area location adjustments."*, eight new paragraphs are added at the end of the discussion.

5. Under the subheading *"3(d). Distribution of proceeds to producers.", "Base and excess plan."*, one new paragraph is added at the end of the discussion.

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

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) Handlers to be regulated and milk to be priced and pooled;

(b) Classification of milk and assignment of receipts to classes of utilization;

(c) Pricing of milk;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Description of the market. The April 1, 1980, [1] population of the proposed marketing area was 3,890,061 persons in Alabama, and 421,002 in the four Florida counties, for a total of 4,311,063 persons. Major population centers include Huntsville, Birmingham, Montgomery, and Mobile, Alabama, and Pensacola, Florida.

Dairy farming constitutes a relatively minor portion of the agricultural production activities in the proposed marketing area. Data contained in one of the exhibits show that in 1974 the value of dairy products sold by Alabama farms with sales of $2,500 and over amounted to only 5.3 percent of the total value of farm products sold by such farms. For the four Florida counties, the percent of such sales accounted for by dairy products varied from 1.8 percent (Santa Rosa County) to 17.6 percent (Escambia County), while a specific figure for Okaloosa County was not shown (less than .05 percent or less than $50,000).

Milk production data show that dairy farming is declining in Alabama. Alabama's milk output declined from 830 million pounds in 1973 to 603 million pounds in 1979, a decline of about 27 percent in seven years. Comparable data for the four-county area in Florida are not available.

While milk production is declining, the population of the proposed marketing area is growing. The estimate noted earlier for April 1980 is a 3.8 percent increase from 1978, and a 13.7 percent increase from 1970. Thus, the market may be portrayed as an area where the demand for milk is increasing at the same time that local supplies are declining. This latter point is reflected in raw milk imports from other states into Alabama that increased from 37 percent of the total supply used by Alabama plants in 1976 to 53 percent in 1979.

[1] Official notice is taken of "1980 Census of Population and Housing," Advance Report, Nos. PHC80-V-2 and PHC80-V-11, Issued March 1981, Bureau of the Census, U.S. Department of Commerce.

Moreover, imports of packaged milk increased 94 percent over the same four-year period, apparently in response to the early 1977 termination of resale pricing regulations in Alabama.

The record provides no specific estimate of the proposed market size in terms of the total milk that would be pooled under the order. Various data were presented for the Alabama consolidated milkshed, which includes all the plants in Alabama that likely would be pooled under the proposed order. However, no such information was provided for the two plants located outside Alabama that probably would be pooled.

Nevertheless, an estimate of the approximate level of Class I sales within the proposed marketing area can be made. The procedure used here was to compute a weighted average per capita consumption figure for fluid milk products in 6 [2] nearby Federal order markets for 1978 [3] and multiply that figure by the 1980 population of the proposed market. On this basis (225 pounds per person X 4,311,063 persons), estimated in-area sales totaled 970 million pounds per year, or an average of 81 million pounds per month.

The 1978 Class I and I–A sales for Alabama, according to information released by the Alabama Dairy Commission, were 67.7 million pounds per month. The Alabama population estimate for 1978 was 3,742,000 persons. Per capita consumption derived from these two numbers was 217 pounds. Using the Alabama per capita figure times the 1980 population yields a projected in-area Class I sales figure of 78 million pounds monthly for the proposed marketing area.

Thus, a reasonable estimate of the Class I sales within the proposed marketing area is 78–81 million pounds, which nevertheless may tend to underestimate the total Class I sales that would be pooled under the order because it does not include out-of-area sales. Out-of-area sales may be larger for some plants associated with the market than their in-area distribution. The record implies, for example, that such is the case for the plant at Tupelo, Mississippi. If so, the total amount of Class I milk that would be pooled could be somewhat larger (by an undetermined amount) than the amount estimated above.

[2] Georgia, New Orleans-Mississippi, Nashville, Upper Florida, Tampa Bay, and Southeastern Florida.

[3] Official notice is hereby taken of Federal Milk Order Market Statistics, Annual Summary for 1979, Statistical Bulletin No. 641, issued July 1980 by the Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C.

Also, the record provides no precise estimate of the total amount of milk that likely would represent the regular supply for the proposed market. This is partly because the record contains little or no evidence on milk supplies associated with the two plants located outside Alabama that are associated with the market. However, an estimate of about 100 million pounds monthly may be reasonable on the basis that additional supplies sufficient to keep the fluid market supplied on a year-round basis are anticipated. Some reserve supplies are necessary to cover daily, weekly, and seasonal variations in milk production and demands for fluid use.

The Florida portion of the proposed marketing area has been without milk marketing regulation for many years. The opposite is true for Alabama where state regulation of the dairy industry has been in operation since the mid 1930's. However, the effectiveness of such regulations has been lessened due to recent court decisions.

1. *Character of commerce.*

The proposed Alabama-West Florida marketing area includes all 67 counties in the State of Alabama and four adjoining counties in Florida.

Handlers that likely would be fully regulated by the proposed order receive Grade A milk from more than 900 dairy farms located in six states and additional milk supplies are received from plants located outside the proposed marketing area.

There are 21 milk distributing plants that likely would be fully regulated under the proposed order. Of these, 20 are located within the proposed area. Several of the plants distribute milk in other states, including Georgia, Mississippi and Tennessee. On the basis of limited Class I sales in the order areas, ten of these plants are partially regulated under one or more Federal milk orders covering areas outside the proposed marketing area, and one has regularly been a pool plant under the Georgia or New Orleans-Mississippi orders.

Milk packaged in 17 plants located in Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, South Carolina, and Tennessee is distributed within the proposed marketing area.

Cooperative associations ship milk not used for fluid use that is produced in Alabama to manufacturing plants in Tennessee and Mississippi for surplus disposition.

The Agricultural Marketing Agreement Act of 1937, as amended, provides in section 608(c)(1) that milk orders issued by the Secretary shall regulate such agricultural commodity, or product thereof, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof. On the basis of the record evidence summarized in the preceding paragraphs, it is concluded that the handling of milk in the proposed marketing area is in the current of interstate commerce. Accordingly, the Department has the authority to establish a Federal milk order for this area.

2. *Need for an order.*

A Federal milk marketing order for the proposed area was supported by three major cooperative associations that supply milk to most of the handlers that would be fully regulated. Together, the three associations represented about 75 percent of the producers supplying the proposed market at the time of the hearing. Proponent of the new order was Associated Milk Producers, Inc. (AMP), Montgomery, Alabama. The other two cooperatives, Dairymen, Inc. (DI), Louisville, Kentucky, and Southern Milk Sales, Inc. (SMS), San Antonio, Texas, both strongly supported the adoption of an order. Representatives of the Alabama Farm Bureau endorsed the effort to obtain an order.

During the early part of 1980, Associated Milk Producers, Inc, was supplying about 33–34 million pounds of milk monthly from more than 400 member producers to 12 milk plants in the proposed marketing area. This represented about three-fourths of the cooperative's total production. Diversions to manufacturing outlets varied from about 8 percent to just under 15 percent of total production during January through May 1980. The balance of the members' total production was sold to other fluid milk plants outside the marketing area. AMP does not operate any milk plants.

Dairymen, Inc., at the time of the hearing, represented about 250 producers regularly supplying milk to eight processing plants in the proposed marketing area. Three of the eight plants are operated by Flav-O-Rich, a DI subsidiary, and they receive more than 75 percent of DI's total deliveries to fluid milk plants in the area. During January-March 1980, DI's shipments to the eight plants averaged about 16 million pounds per month. Additionally, in 1978 and 1979, a DI plant at Lewisburg, Tennessee, regularly shipped milk to Alabama plants. In early 1980, such shipments were minimal through March and none were made in April and May. The cooperative operates one ice cream manufacturing plant in Alabama. The data introduced at the hearing did not

indicate how much milk associated with the proposed market by DI was diverted to manufacturing plants in the early months of 1980. However, in September-December 1979, DI's monthly diversions to manufacturing outlets ranged from two to four million pounds.

At the time of the hearing, the third cooperative, Southern Milk Sales, Inc, supplied milk from about 100 farms to six fluid milk plants in the proposed market. During January through May 1980, SMS deliveries to those plants averaged about 7.5 million pounds per month. The association operates no plants in connection with the proposed market, and only occasionally diverts milk to manufacturing plants from distributing plants in this market.

Several witnesses testified for the proponent cooperative on the need for a Federal order. A spokesman for Dairymen, Inc., presented the association's views regarding the need for an order. In addition, a professor in the Department of Agricultural Economics and Rural Sociology at Auburn University testified on the need for an order as a public service function of the University. The major viewpoints of these hearing participants are briefly summarized as follows:

1. There is no effective application of classified pricing and pooling on a marketwide basis in the proposed marketing area to assure farmers of payment for their milk according to its use. Absent such a system, some processors in the proposed area buy milk from producers in other states at prices that differ from prices paid producers located in Alabama. The Alabama Dairy Commission only regulates the price of milk produced, processed, and sold within the State. Inequities result due to the lack of uniformity in prices paid for milk in the same use and which is in direct competition.

2. The combination of individual handler pooling under the State's program and the State's inability to price all milk received and processed at Alabama distributing plants results in a significant disparity in prices paid to producers for their milk. Not all producers delivering milk to a specific plant receive the same price f.o.b. that plant, nor do producers delivering to different plants receive the same price even though such plants are located in the same geographic area.

3. The prices paid some producers are not based on plant utilization, or marketwide utilization. Instead, they are paid flat prices. Such raw milk buying practices create disorder in the market, which is demonstrated by enequities in producer payments and inequities in raw milk costs to processors competing in a common area. Purchases of lower-priced milk for fluid use take the market away from producers who normally supply the local market, leaving them with surplus milk to be diverted to lower-priced manufacturing use. In some cases the local producers must seek what normally is a more distant alternative buyer, which increases costs and reduces marketing efficiency.

4. Under an individual handler pooling system, there is inequity among producers in balancing the daily milk requirements of distributing plants and in the handling of the necessary reserve and the seasonal surplus of the market. Cooperatives perform the function of balancing supplies, yet much of the milk so diverted to manufacturing use is not pooled and so the full costs of balancing are borne by the cooperatives. Thus, where nonpooled diversions by cooperatives are required by distributors, independent producers receive higher prices for their milk.

5. The regulatory program operated by the Alabama Dairy Commission is the only milk marketing regulatory program in effect in the proposed marketing area. That program is ineffective and its future is uncertain under current Alabama law. Thus, there is a low level of producer confidence in the State program.

6. Currently, adequate market information is not regularly available about milk marketing in Alabama, and almost no such information is available about milk marketing in the Florida portion of the proposed marketing area.

7. The auditing program of the Alabama Dairy Commission is inadequate, and no such program exists in the Florida portion of the marketing area. The auditing program conducted through a Federal order would provide greater assurance to producers that they would receive the full value for their milk based on how it was used by processing plants.

8. Individual handler pooling of milk as it exists in Alabama does not provide equity among producers and is a disorderly marketing procedure in today's milk market.

9. Some Alabama processors who distribute milk in price zones other than the zone where the plant is located are paying for their raw milk at Class I prices based on the point of sale of fluid milk products. AMP instituted "point-of-sale" pricing on June 1, 1980.

10. Cooperatives are under constant pressure to reduce the prices charged to handlers in certain areas, particularly from Birmingham, Alabama, northward. The pressure comes from handlers seeking to be competitive with other handlers who receive some, or even all, of their milk at lower unregulated prices from sources outside Alabama.

11. There is no effective program for determining whether producers are paid for their milk on the basis of accurate weights and butterfat tests.

There was no testimony directly opposing an order, but a spokesman for one group of producers who supply milk to a plant at Pensacola, Florida, stated the group's opposition to being included under any Federal order for Alabama. It was indicated that if the plant receiving their milk is to be regulated under a Federal order, the group would prefer that it be regulated under the Upper Florida order. However, this proceeding was not open to consideration of matters pertaining to the Upper Florida order, and no such proposals were received.

Two independent producers offered general testimony related to need for an order. One, who represented more than 50 other independent dairymen, urged that any regulations adopted be kept as simple as possible. Another, who said he represented 23 independent producers, opposed a marketwide pool, preferring instead an individual handler pool.

There was no handler opposition to an order expressed at the hearing. One handler's brief clearly stated that it took no position on the need for an order.

The cooperatives associated with the market generally agree that an overall system of classification, pricing, and accounting for milk should be adopted to restore stability, and that for such a system to be effective it must be established under Federal authority. Clearly, there is a consensus among the major producer groups that the state-administered program no longer effectively provides market order and stability.

The basic problem related to the need for an order is that the State of Alabama cannot classify and price milk produced outside the State, nor milk produced in Alabama and disposed of elsewhere. Over one-half of the milk supply utilized by Alabama handlers that would be regulated under a Federal order comes from outside the State. Thus, the State's classification and pricing program is not applicable to the major portion of the market's milk supply. Yet, milk produced in Alabama competes for the same Alabama retail markets as milk produced in Tennessee, and the out-of-state milk has the competitive advantage. Moreover, the State of Florida has not had a milk classification and pricing program since 1963.

The record indicates that at least two Alabama plants obtain most, if not all, of their raw milk supplies from dairy farmers in Tennessee. Such out-of-state milk is not subject to the Alabama Milk Commission's classified pricing program, but would be regulated under a Federal order.

Exhibits entered by a cooperative and by a dairy farmer from Tennessee show that a Birmingham area plant pays such dairy farmers for their milk under a base and excess plan unrelated to the classified use of milk in the plant. The dairy farmer introduced as an exhibit the milk purchase statement that he received from the plant for milk delivered during May 1980, which showed that he received $13.20 and $10.87 per hundredweight for base milk and excess milk, respectively (without adjustment for butterfat content). The base milk price was applicable at the farmer's barn, while the price for excess milk was the net price after deduction of hauling charges for the excess milk, which were about 85 cents per hundredweight. Adjusted to a 3.3 percent butterfat content, the producer received a weighted average price of about $12.70 per hundredweight for his milk at the farm.

In the above example, the handler's cost for the base milk was $13.20 plus hauling, presumably about 85 cents per hundredweight, for a total price at the plant of about $14.05. However, the Alabama Dairy Commission's price for Class I milk at Birmingham was $14.74 for that month. Absent information on the plant's actual utilization of Class I and Class II milk, it is impossible to determine whether the dairy farmer's pay price was less than he would have received if paid on the basis of the plant's pool blend price at Alabama's prices. Nevertheless, such an ability to evade the State's classification and pricing program is not conducive to the maintenance of a stable and orderly market for milk.

A second example further demonstrates the nature of the problem that proponent seeks to address through obtaining a Federal order. In this case, another Tennessee producer testified that at the time of the hearing he was receiving a flat price of $13.75 per hundredweight for his milk delivered to a plant at Gadsden, Alabama. The hauling cost was 75 cents per hundredweight, so the producer's net return was $13.00 per hundredweight. Again, neither the handler's cost ($13.75 per hundredweight) nor the producer's return is in any way based on the plant's classified utilization of milk under the State program. However, it must be noted that the $13.75 price was at least $1.00 per hundredweight below the Alabama Dairy Commission's Class I price applicable at Gadsden for May, June, or July 1980.

The record indicates that utilization at the Gadsden plant varies from 70 to 88 percent Class I. Whether or to what extent the handler obtains milk at less than State prices in this example again depends on whether the plant's Class I utilization is at the high or the low end of that range of utilization.

As noted earlier, the plant at Pensacola, Florida, is not subject to any State regulations for classifying and pricing milk, and was not partially regulated under any Federal milk order in the spring of 1980. Thus, the plant is not subject to any classification and pricing regulations on its receipts of milk from dairy farmers. In this regard, a Florida dairy farmer, whose testimony was noted earlier, testified that as of June 1980 he and the other producers he represented were receiving a flat price of $14.65 per hundredweight for their milk f.o.b. at the Pensacola plant. In his case, the hauling cost was 38 cents per hundredweight plus a $2.00 stop charge. It is noted that the Alabama Dairy Commission's Class I price for June 1980, applicable to plants in the Mobile, Alabama, area (which is near Pensacola), was $15.13 per hundredweight.

Under the Alabama regulations, Class I milk products distributed out of state are designated as Class I–A and may be accounted for at prices different from the Class I price. This would be the case for milk distributed in the four unregulated Florida counties by plants located in Alabama. Under such a system, the proportion of a plant's receipts that is fully subject to Alabama's State regulations depends entirely on how much milk is obtained from and disposed of outside Alabama. The Alabama plants, therefore, are subject to varying degrees of regulation, and plant operators have no assurance that their competitors must pay at least the minimum class prices for their milk.

It is noted that the Alabama Dairy Commission's announced butterfat differential for adjusting payments to producers for variations from 3.5 percent butterfat content was 15 cents per one-tenth percent variation for the months of November 1979 through April 1980. However, one exhibit, a milk purchase statement for April 1980, shows a differential of 15.4 cents applicable to milk purchased from a Tennessee dairy farmer. Thus, a uniform butterfat differential did not apply to payments to all producers supplying milk to the proposed marketing area.

Another factor present in the Alabama market situation that contributes to market instability is unequal sharing of the burden of handling reserve milk supplies. The Alabama Milk Commission's regulations provide for individual handler pooling. Under that plan milk diverted to manufacturing plants is classified and priced on a load-by-load basis only if the processing plant operator makes a specific request to include a load in his plant's report of milk receipts and use. As a result, most of the milk that cooperatives have diverted to manufacturing uses in recent years has not been included in a plant's pool. Including diverted milk would, of course, lower the rate of return for any nonmember producers that are part of a plant's supply, and so handlers apparently have been reluctant to include a cooperative's diverted milk as part of their pool. This clearly has put the full burden of disposing of reserve milk supplies onto the dairy farmers who are members of the cooperatives. The costs of balancing supplies for handlers and handling the market's reserve milk supplies are not shared by nonmembers. While all the milk produced by a nonmember generally is pooled, the same often is not true for the members of a cooperative. For cooperative members, it is more likely that only the milk actually received at the plant (often only to supplement supplies of nonmember milk) will be priced under the State program.

Still another aspect of the current situation that must be recognized is that producers lack confidence in the current regulatory program for Alabama and they are uncertain whether the State's program will long endure. This latter point was borne out in testimony that the legislative authority for the State's milk pricing regulations recently has been extended for relatively short periods of time. The record shows that in 1979 the authority to regulate milk handling was extended for two years, or until a Federal milk order could be implemented.

From the foregoing, it is clear that there is no overall plan whereby all dairy farmers who supply milk for distribution in the Alabama-West Florida marketing area are assured of payment for their milk in accordance with its use and at minimum prices that are uniformly applicable throughout the market. The problems of unstable marketing conditions encountered by the producers in the Alabama-West Florida marketing area, if they continue,

could lead to even further dependence on outside milk supplies to meet the fluid milk needs of the area. A Federal milk order establishing a classified milk pricing system at reasonable levels and a marketwide pool for distributing the returns from milk sold at such prices uniformly among all producers will help provide the needed market stability. An environment of stable and orderly marketing conditions throughout the Alabama-West Florida marketing area depends on the adoption of a classified pricing plan based on audited utilization of all Grade A milk purchased by handlers from producers and an equitable division among all producers of the proceeds obtained from sales of their milk under the classified pricing plan.

Under a Federal milk order all producers who supply the proposed market will be assured that their milk will be sold at reasonable minimum prices applicable to the classified uses of milk provided herein and that each producer will share pro rata in the returns from such sales in the respective classes, including the lower priced uses of reserve milk supplies not needed for fluid uses. Handlers will be assured that their competitors will pay for milk at not less than the minimum prices set by the order and that such prices will apply whether the milk comes from farms in Alabama, Florida, Tennessee, or other states, and without regard to whether the milk is disposed of inside or outside the marketing area.

The record in this proceeding clearly shows that the dairy industry does not regularly have available detailed information regarding milk procurement and use in the Alabama-West Florida marketing area. Such information would be provided on a continuing basis under a Federal order, and would contribute to the development and maintenance of stable and orderly marketing conditions. Although the lack of such data does not neccessarily demonstrate need for an order, the availability of complete and accurate market information should provide a substantial benefit to producers, cooperatives, and handlers alike.

It is concluded that a Federal order for the Alabama-West Florida marketing area as herein proposed will stabilize and improve milk marketing conditions in the area. The order is in the public interest in that it will establish orderly marketing conditions for producers and handlers relative to milk distributed in the proposed marketing area and will assure a continuing and adequate supply of high quality milk for consumers. Moreover, the order will effectuate the declared policy of the Act by providing for:

1. The establishment of uniform minimum prices to handlers for milk received from producers according to a classified plan based upon the utilization made of the milk;

2. A regular and dependable procedure that affords all interested parties the opportunity to participate, through public hearings, in the determination of changes that may be required in the marketing plan in order to insure an orderly market;

3. An impartial audit of handlers' records to verify the payment of required prices;

4. A system for verifying the accuracy of the weight and butterfat content of milk purchased;

5. Uniform returns to producers supplying the market based upon an equal sharing among all such producers of the returns from the order prices for both the higher-valued Class I milk and the lower returns from the sale of reserve milk that cannot be marketed for fluid use; and

6. Marketwide information on receipts, sales, prices, and other related data concerning milk marketing.

3(a). *Handlers to be regulated and milk to be priced and pooled.*

It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specific definitions to describe the marketing area, route disposition, the types of plants, the various categories or regulated persons (handlers), and the persons (producers) whose milk will be subject to the uniform prices.

Marketing area—The Alabama-West Florida marketing area should include all the territory within the boundaries of Alabama and the Florida counties of Escambia, Santa Rosa, Okaloosa and Walton. The defined marketing area should include all piers, docks, and wharves connected therewith and all craft moored at such facilities. The marketing area should include, as well, all territory occupied by municipal, state, or federal government reservations, installations, institutions, or other similar establishments if any part thereof is within the boundaries specified above.

The record in this proceeding clearly establishes that the entire State of Alabama and the four Florida Counties comprise a single marketing area for milk. Such marketing area defines an area wherein the plants that would be fully regulated are the primary sources of milk for consumers.

The basic data to support the marketing area definition adopted herein were obtained from a survey of 523 grocery stores. The estimates of fluid milk distribution by counties that were placed in the record were based solely on the observations made in the grocery stores surveyed. There are limitations, of course, to the conclusions that may be drawn from such data. Nevertheless, the information is useful for identifying which plants compete with other plants for Class I sales and for providing a reasonable estimate of the geographic territory over which that competition extends. It also should be pointed out that, with minor exceptions, the survey data were not challenged at the hearing.

The proposed marketing area is made up of 67 counties in Alabama and four counties in Florida. An analysis of the survey data shows that with only minor exceptions, the proposed area is a largely self-contained market with respect to milk distribution. For example, in 38 of the 71 counties, the survey indicates that 100 percent of the distribution is from plants located within the marketing area. Plants in the marketing area distributed at least 75 percent of the total in another 18 counties. Thus, in 79 percent of the counties, at least ¾ of the distribution observed in the survey was from plants located in the marketing area.

In five Alabama counties (Geneva, Houston, Lee, Russell, and Sumter) the survey data indicated that more than 50 percent of the distribution came from plants that would not be regulated under the new order. For two other counties, Barbour and Henry, a witness for Beatrice Foods (Meadow Gold) disagreed with the survey results and indicated that sales in these two counties were split about 50 percent each to Alabama plants and to plants fully regulated under the Georgia order. Thus, it is estimated that plants fully regulated under the Georgia Federal order distributed at least half of the total milk distributed in six counties in southeastern Alabama. The observed data for Sumter County indicate the majority of milk sold there originates at a plant pooled under the New Orleans-Mississippi Federal milk order. In these seven counties, the primary source of milk appears to be plants regulated under other orders.

Nevertheless, these counties should be included in the marketing area. Failure to do so would serve no real purpose since the milk being distributed in them would be regulated, either under the Alabama-West Florida order or under some other order. Moreover, inclusion of the seven counties will not

result in full regulation of any plant that otherwise would be unregulated, or cause a plant to shift regulation from another order to the order adopted herein. Including the counties also will simplify the reporting requirements of handlers and will simplify administration of the order.

The marketing area is also characterized by substantial overlapping of sales territories. This further demonstrates that the marketing area defines an area within which there is considerable competition among handlers. One plant was found to have its products in stores near the Alabama-Tennessee border as well as in stores in Florida. Most of the counties in the marketing area were shown to have milk distributed from three or more plants located in the marketing area. In only six counties in the proposed marketing area was there distribution from only one plant located within the area.

In addition to competing with each other for Class I sales in common areas, many of these plants either compete with each other for milk supplies, or receive at least a portion of their supplies from the same cooperative association.

As noted elsewhere in this decision, a group of producers who deliver their milk to the plant at Pensacola, Florida, urged that the four Florida counties not be included with any order adopted for Alabama. Nevertheless, there is compelling evidence that the Florida territory should be included in the marketing area. The plant in Pensacola distributes milk in five Alabama counties. The survey data indicate that such sales comprise about 35 percent of the plant's total distribution within the proposed area.

In addition, the grocery store survey shows that five plants located in Alabama distribute milk into the Florida portion of the market. These plants distributed from three to 24 percent of their total in-area sales within the Florida territory. These data, and those noted in the preceding paragraph, provide a substantial basis for not limiting the proposed marketing area to just the State of Alabama.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. As proposed by the order proponent, and adopted herein, route disposition would mean any delivery of a fluid milk product classified as Class I milk to a retail or wholesale outlet (except to a plant), either directly or through any distribution facility or vendor, and including any disposition from a plant store or through a vending machine. It would not include the delivery of fluid milk products to a handler's distribution points. The distribution from such points would be considered a route disposition from the milk plant where the fluid milk products were processed and packaged.

Plant. The order should contain a "plant" definition for purposes of clarity, ease of order interpretation and reference. As proponent suggested and as adopted herein, "plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged.

Separate facilities used only as a distribution point for storing packaged fluid milk products in transit would not be a plant. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

In connection with the discussion of the plant definition, two related issues should be considered. In that regard, the proponent cooperative included a reload point definition in the proposed order. A witness for the cooperative testified that a definition of such a facility was needed to clearly establish it as a non-plant and thus not a pricing point. The witness described such a facility for the record as generally an enclosed building without stationary holding tanks (to cool and store milk) where milk is transferred from one tank truck to another. However, he also indicated that no such facility was being used to supply milk to the Alabama market at the time of the hearing.

The plant definition adopted herein provides the basic guidelines as to what constitutes a reload point. In that regard, "separate facilities without stationary holding tanks which are used only as a reload point for transferring bulk milk from one tank truck to another" would not be a plant under the plant definition adopted herein. Hence, the cooperative's intent with respect to a reload point is accomplished in the plant definition. There is no need to include a separate reload point definition in the order.

Another proposal pertaining to the definition of a plant was discussed at the hearing. Five handlers who would be fully regulated under the order proposed that a manufacturing plant which is operated by a handler who also operates a fluid milk plant not be considered a part of the fluid milk plant operation for pooling purposes if the manufacturing and fluid processing facilities are operated completely separate of each other. A spokesman for the handlers testified that several dairy companies in Alabama operate separate ice cream manufacturing plants in addition to their fluid milk plants. He stated that such manufacturing plants, which keep separate books and records, do not distribute fluid milk products on routes and normally do not receive milk from dairy farmers. Rather, receipts at the manufacturing plant essentially are milk and cream that are excess to the handler's distributing plant operations and which are transferred to the handler's manufacturing plant from the distributing plant.

As provided herein, an ice cream manufacturing plant would be defined as a "plant" since it processes milk. However, the plant would not be considered a part of a distributing plant unless the two plants are operated jointly on the same premises, with the receiving, storage, or processing facilities being shared. Whether the separately operated manufacturing plant would be a pool plant would depend on whether the plant also distributed any fluid milk products in the market or shipped bulk milk to pool distributing plants. The provisions that would determine the pooling status of a plant are discussed later under the heading "pool plant."

Distributing plant. The order should define a distributing plant as a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. The definition adopted herein is patterned after the one proposed by the order proponent, with one exception that is discussed later. The definition for a distributing plant is provided to describe the activities conducted at such a plant and to distinguish this type of plant operation from others. It also is helpful in referring to this particular type of plant throughout the order.

Proponent's definition referred to milk "approved for fluid consumption." The definition adopted refers to "Grade A milk" and not to milk "approved for fluid consumption." The terms are essentially synonymous, however, when used in context of the market encompassed by this order area.

The Alabama Department of Public Health is responsible for regulating the State's dairy industry with respect to milk sanitation and quality. It is responsible for all milk and milk products form the time the milk is picked up at the farm, transported to a processing plant, processed, packaged and delivered to the consumer. A similar program is conducted by the Division of

Dairy Industry of the State of Florida. The health regulations and the standards for rejection of milk in the two states in many instances are identical.

In that regard, both states conduct routine inspections of dairy farms and processing plants. Rigid surveillance programs are conducted by agencies of both States to insure that only high quality milk and milk products are sold to consumers, and the regulations of both states specify that only Grade A milk may be sold. This means that the dairy farms are inspected and approved for the production of Grade A milk. Likewise, all plants processing or packaging milk for fluid use must be approved for handling Grade A milk. Accordingly, it is appropriate to refer in the order to "Grade A milk", rather than to milk "approved for fluid consumption," as proposed.

Supply plant. A "supply plant" also should be defined under the order. As adopted herein, "supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk, and from which fluid milk products are transferred during the month to a pool distributing plant.

The definition provided herein is similar to the one suggested by the order proponent. However, for the reasons discussed under the definition of a distributing plant, the supply plant definition should reflect that the plant must be approved to handle Grade A milk.

Proponent's witness testified at the hearing that there were no supply plants furnishing sufficient quantities of milk to distributing plants on a regular basis to qualify for pool plant status. The cooperative also indicated that it was not currently operating a supply plant and has no plans to do so in the future. The only reason proponent advanced for including a supply plant provision for the Alabama-West Florida order was that other Federal orders in the Southeast provide a definition for such plants. However, under cross-examination the cooperative's spokesman acknowledged that although the Alabama market essentially is a direct-delivery market, it is possible in the future that milk may need to be brought into the market through supply plants from procurement areas located considerable distances from the market. In these cases, according to the witness, it would not be enconomical to furnish the milk on a direct-ship basis.

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants engaged in serving the fluid needs of the regulated market and those that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. Because of differences in marketing practices and functions between distributing plants, supply plants and cooperative "balancing" plants, separate performance standards for each type of operation are provided in the attached order.

The following discussion sets forth the pooling standards that should apply to the various types of pool plants. To facilitate the discussion, it is noted that the performance standards for pooling a distributing plant and a supply plant provide that the plant's required association with the market should be measured in terms of the proportion of its milk receipts that are disposed of in the market. It is intended that such receipts would include any producer milk that is diverted from the plant to nonpool plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an intergral part of the plant's supply of milk and acquires producer milk status by virtue of its association with such plant. Therefore, diverted milk should be included in the total receipts of milk at the pool distributing plant or the pool supply plant from which the milk was diverted for the purpose of determining whether the plant qualifies as a pool plant.

Milk that a cooperative bulk tank handler diverts from a pool plant to a nonpool plant also should be included in such plant's receipts for purposes of determining the plant's pool status. Requiring all diverted milk to be included as a receipt at pool plants from which diverted in determining their pool status will insure the integrity of the order by requiring all producer milk to be associated with pool plants.

Along that same line, milk diverted to a supply plant from an other order plant should not be included as a receipt of milk at the supply plant for the purpose of determining whether the plant qualifies as a pool plant. Since such milk would be considered a part of the total supply of milk at the plant from which diverted, it should not be included in the supply plant's receipts. This will permit milk to be diverted to a supply plant with manufacturing facilities for processing without affecting the pool status of the supply plant. A pool supply plant with manufacturing capabilities may represent the nearest available outlet for milk surplus to the fluid needs of another Federal order area.

No similar accommodation needs to be made when milk is diverted to a distributing plant. Since these plants are essentially fluid bottling plants, there really is no reason to divert milk to these plants for any reason other than for bottling purposes. Hence, all milk physically received (including milk diverted to such plant) at the plant should be considered in the plant's total receipts for the purpose of determining whether the distributing plant qualifies as a pool plant.

Provision also is made for a cooperative association to pool a balancing plant. The pooling standard for such a plant would be measured in terms of the cooperative's overall supply function for the market, i.e., the proportion of the cooperative's member producer milk that is delivered to pool distributing plants.

In connection with performance standards for pool plants, Diarymen, Inc. (DI) submitted a modification at the hearing to impose seasonally varying Class I utilization standards for pooling distributing plants and supply plants. Before discussing the appropriate pooling performance standards for the various types of plants, the question of seasonality of fluid sales and producer receipts should be reviewed.

The order proponent, Associated milk Producers (AMP), proposed that the months of August through February be recognized as the season when milk proudction is lowest relative to the market's fluid needs. The months of March through July were designated as the flush milk production months under the cooperative's proposal. DI suggested that September through January be considered as the short milk production season and that February through August be recognized as the flush milk production season.

Market data indicate that the period of September through January generally is the time when milk supplies are shortest relative to the fluid needs of the proposed Alabama-West Florida market. On the other hand, the months of February through August are the months when milk supplies for this market are more adequate to meet the fluid needs of distributing plants.

Based on a statistical summary of data compiled by the Alabama Dairy Commission for a recent 4-year period (1976–79), average monthly Class I sales as a percent of the total supply available to Alabama processors ranged from 91 percent in November to 87 percent in July. The Class I percentage so computed was above 90 percent in each of the months of September through January except in December. The

relationship between supplies and sales is somewhat unique in the month of December when, due to school closings and the holidays, the demand for milk falls off sharply in the latter part of the month. However, in view of the relatively higher fluid demand during the first two-thirds of the month, it is appropriate to include December with the months of September, October, November and January as months when production is relatively short to meet the fluid needs of this market.

In each of the other seven months of February through August, the monthly average Class I sales as a percent of producer supply available to Alabama processors was in the upper 80's. Although the sales-supply situation in these months has been in fairly good balance, these are the months when milk supplies have been more adequate to meet the proposed market's fluid needs. Moreover, it should be noted that the data from which these utilization percentages were computed do not include all of the milk that would be diverted to nonfluid uses in these months. Thus, the actual utilization levels under a Federal order likely will be lower.

The months of September through January are adopted as the market's short milk production season. In that regard, greater shipments by supply plants will be required and individual producers will have to "touch base" more often during these months under the proposed order. In addition, on the basis of their deliveries in such 5-month period, producers will establish their bases under the base-excess plan adopted in this decision.

On the other hand, the months of February through August will be adopted as the flush milk production period for this market. Accordingly, fewer shipments will be required by supply plants and individual producers will not have to "touch-base" as often during these months. In addition, producers will receive their payments on the basis of their base and excess milk deliveries during part of this period.

With respect to its modified proposal to impose Class I utilization standards, DI urged that to qualify as a pool plant not less than 70 percent of certain specified receipts at the distributing plant or supply plant in each of the months of September through January and not less than 50 percent during each of the months of February through August be assigned to Class I milk. Under this modification, a monthly Class I use standard for distributing plants would be used in lieu of the total route disposition standard suggested by the order proponent.

A spokesman for DI contended that monthly Class I use standards for distributing plants and supply plants are needed to assure that the milk pooled under this order is closely associated with the market's fluid milk needs. Based on the statistical data of the Alabama Dairy Commission, the DI witness testified that its proposal would allow an individual plant to have a class I utilization at least 15 percentage points below the market's average Class I use during the September–January period. During the months of February through August, the proposal by DI would allow an individual plant's Class I use to be about 25 percentage points below the market's average Class I utilization and maintain pool status for such plant. In DI's view, these monthly minimum Class I requirements on distributing plants and supply plants, which would vary seasonally, are reasonable in view of marketing conditions in the proposed area, even though they would be well under average levels of Class I use.

Southern Milk Sales (SMS) supported DI's proposal to impose a Class I utilization standard on supply plants. A spokesman for the association contended that the Class I requirement is needed to insure that milk delivered to a supply plant by producers associated with the proposed market will be made available to pool distributing plants for their bottling requirements. He further testified that the integrity of the blend price thus would be protected for producers closely associated with the market's Class I sales.

In its brief, AMP stated its opposition to DI's propqsal to impose Class I utilization standards on distributing plants and supply plants. In that regard, the cooperative supported its position on performance standards for such pool plants as stated at the hearing. AMP's brief stated its view that its pooling proposals were adequate to demonstrate a plant's association with the marketing area to such an extent that it should be a pool plant. Also, Kraft, Inc., in its brief opposed DI's pooling proposal on the basis that it would exclude available milk supplies from participation in the marketwide pool.

DI excepted to the sentence in the recommended decision which stated that adoption of DI's proposed Class I utilization standards for distributing plants and supply plants "would exclude available milk supplies from participation in the marketwide pool." The cooperative's primary concern in this regard was that by referring to the statement in the decision the Department was supporting Kraft's viewpoint. The cooperative claimed that although Kraft did not testify at this hearing, the handler has clearly stated at other hearings in the Southeast region that the purpose of its supply plant operations in other Federal order markets was to obtain milk for its manufacturing plants.

The Kraft statement was related in the decision merely to describe the handler's position with respect to the cooperative's proposed Class I utilization standards, and was considered along with all other information presented on this record in arriving at the findings and conclusions of the recommended decision with respect to this issue.

There is no basis on this record to conclude that the standards for pooling distributing plants and supply plants in the proposed market require the imposition of Class I utilization standards. There is no indication that handlers who will be regulated under the Alabama-West Florida order are likely to experience problems in obtaining adequate supplies of milk for fluid purposes because milk is being used instead for manufacturing uses elsewhere.

DI excepted to the denial of its proposed Class I utilization standards for supply plants. The cooperative contended that a performance requirement that would permit a supply plant to maintain its pool status with a Class I utilization of 35 percent during the months when production is short relative to Class I sales is inappropriate for this market. DI claimed that its proposed higher standards would be more realistic and proper in terms of this market's Class I use.

The cooperative insisted that the recommended decision's conclusion that the imposition of Class I utilization standards for pooling supply plants in the proposed market could not be supported on the basis stated in the decision, i.e., "there is no indication that handlers who will be regulated under the Alabama-West Florida order are likely to experience problems in obtaining adequate supplies of milk for fluid purposes because milk is being used instead for manufacturing uses elsewhere." DI argued that there has not been an opportunity for supply plant operators to retain milk for their manufacturing operations because there has not been a Federal order covering this area.

Even though the proposed marketing area has not been covered by a Federal order, the need for Class I utilization standards on supply plants to assure adequate supplies of milk to meet the fluid needs of distributing plants that

will be subject to the new order is not justified on the basis of the record. Although DI disagreed with this conclusion, the exception provides no compelling arguments for reaching a different conclusion. We believe that the cooperative's concern that milk will be committed to manufacturing uses and thus not be available for the market's fluid needs throughout the year is taken care of by the combination of shipping standards for supply plants, the diversion allowances for handlers, and the touch-base requirements for individual producers adopted herein.

DI offered considerable testimony on why the Alabama-West Florida order should accommodate only the pooling of enough milk to meet the proposed market's Class I needs, including reserves to accommodate the daily, weekly, and seasonal variations in supply and demand. DI's contention was that this is what the Act contemplates, and that it indeed has been the Department's policy in that regard.

The Act provides no basis for concluding that a Federal order should restrict the absolute volume of Grade A milk that is pooled. What is intended is to provide regulations to ensure that the market's fluid milk needs will be met under marketing conditions characterized by orderliness and stability. To that end, the order should provide certain performance standards for identifying plants and producers who participate in meeting the fluid milk needs of the market to a degree that warrants being included in the marketwide pool. However, those performance standards should not preclude from pool status additional supplies of milk that may in the future become associated with the fluid milk needs of the Alabama-West Florida market.

In connection with its proposal to impose a Class I utilization requirement on supply plants, DI proposed that milk transferred from a supply plant to another pool plant be classified on a pro rata basis with all other pool receipts at such plant. Since this decision denies the proposal to impose a Class I utilization requirement on supply plants, it it not necessary to further consider this corollary proposal.

In response to DI's proposed modification to impose a Class I utilization standard on distributing plants, a handler operating a fluid milk processing plant at Gadsden, Alabama, proposed that two or more distributing plants of the same handler be permitted to combine their dispositions into a single unit for the purpose of meetings the Class I utilization percentage requirement proposed by DI. The handler spokesman contended that, if DI's proposal is adopted, the Gadsden plant may not qualify as a pool plant because byproducts are made at that plant for distribution by its other fluid milk processing plants in Alabama.

In its brief, the handler took the position that its unit pooling proposal should be considered only if DI's proposed Class I utilization standards are adopted. Since this decision denies the proposal to impose a Class I utilization requirement on distributing plants, it is not necessary to further consider this handler proposal.

To qualify as a pool plant under the proposed Alabama-West Florida order, a distributing plant would be required to meet performance standards related to the proportion of its receipts used in route disposition, including such dispositions in the marketing area. Pool distributing plants would include only those plants substantially engaged in the distribution of fluid milk products. in this connection, a pool distributing plant's total route disposition each month, both inside and outside the marketing area, should not be less than 50 percent of its receipts from all sources of Grade A fluid milk products that are physically received at such plant or diverted from the plant to nonpool plants. The route disposition of such a plant in the marketing area must also be at least the lesser of a daily average of 1,500 pounds or 10 percent of such receipts.

The standards for pooling a distributing plant are similar to those proposed by the proponent cooperative. Based on the record of marketing conditions in the proposed marketing area, the 50 percent route disposition requirement herein provided should be appropriate. Any plant which has a majority of its business as route disposition of fluid milk products should be considered as a pool distributing plant under the new order. The 50 percent route disposition standard is commonly used throughout the Federal milk order program to determine whether a plant is primarily involved in processing and distributing fluid milk products.

In exceptions to the recommended decision, the Alabama association of milk dealers suggested that a distributing plant's total Class I disposition (rather than only its route disposition) be used as a standard to determine whether such a plant qualified for pool plant status under the new order. The handler group contented that the pooling of a distributing plant should be based on the plant's Class I utilization, since the milk is paid for on the basis of the way it is used by such pool plant operator.

No such modification of the proposed pooling standards for distributing plants was made at the hearing. Hence, the issue was not explored on the record and there is no basis in the record to support adoption of the handlers' suggested modification. The findings and conclusions of the recommended decision on this point therefore are affirmed and the suggested change is denied.

AMP's proposed in-area route disposition requirement was intended to assure that a large plant with substantial sales in the marketing area would be fully regulated. For example, assume that a distributing plant has 5 million pounds of Grade A milk receipts and route dispositions of 300,000 pounds per month (6 percent of receipts) in the marketing area. If the only in-area measure of performance for pool plant status is the 10 percent requirement, the plant would be a partially regulated distributing plant. Nevertheless, 300,000 pounds of route dispositions could represent a major portion of the total Class I sales within a small portion of the marketing area. For this reason, AMP proposed that any plant having route disposition in the marketing area averaging 1,500 pounds per day (45,000 pounds per month) should be fully regulated under the order. The AMP witness indicated that the plant at Tupelo, Mississippi, could be in a position to operate in the manner described above.

The in-area pool plant standard proposed by AMP is a reasonable pooling standard and should be adopted. Accordingly, a distributing plant with at least the lesser of a daily average of 1,500 pounds or 10 percent of its receipts disposed of on routes in the marketing area would be a pool plant unless the plant also qualifies as a pool plant under another Federal order and the plant has a larger volume of route disposition in the marketing area of such other order. This standard will provide a reasonable indication of when a distributing plant is associated with this market to the extent that warrants its full regulation under the order.

The record indicates that the 21 distributing plants that would most likely qualify as pool plants under the Alabama-West Florida order would have no difficulty in meeting either the total route disposition standard or the in-area route disposition standard adopted herein.

A supply plant should qualify for pool status by transferring a certain percentage of its total receipts from

dairy farmers to pool distributing plants. As provided herein, the supply plant's total receipts would include deliveries to the plant by its own producers and by a cooperative as a bulk tank handler. In addition, producer milk diverted from a supply plant would be included in the plant's total receipts from dairy farmers and, conversely, milk diverted to such plant from another order plant would be excluded from such plant's total receipts for the purpose of determining whether the supply plant qualifies as a pool plant. The reasons for such inclusions and exclusions in a supply plant's total receipts have been discussed previously with respect to this issue and need not be repeated here.

AMP proposed a shipping requirement of 50 percent for supply plants. The cooperative's proposal also would provide automatic pool plant status for a supply plant in the months of March through July if such plant qualified as a pool supply plant for this market in each of the immediately preceding months of August through February.

A witness for DI testified that the order proponent's suggested performance standards for a supply plant would allow such a plant to have a Class I utilization as low as 25 percent and remain pooled. He contended that in an area where the annual average Class I use has been almost 90 percent, a performance standard that would allow a plant to have Class I utilization as low as 25 percent is inappropriate when the objective of the Act is to obtain milk for fluid use.

The witness for Dairymen, Inc., testified that he did not believe there was a need for either a supply plant definition in the order or the operation of such plants for this market. This was premised on the belief that the proposed market can be supplied on a direct-delivered basis. He contended that because of this supply plants are an inefficient method of supplying milk to the market.

However, since Federal orders allow handlers to buy their milk supply from whomever they wish, there could be occasions when a milk supply is obtained at sufficient distance from the market center to make it practical for milk to be handled through a supply plant. In recognition of this and in view of the proposed market's anticipated supply-demand conditions, DI proposed seasonally varying monthly shipping requirements for supply plants. Under the DI proposal, a supply plant would be required to ship at least 70 percent of its total receipts from dairy farmers to pool distributing plants during each of the months of September through January and 50 percent of such receipts in each of the other months.

Southern Milk Sales supported DI's higher shipping standards for supply plants for the same reasons that it supported the imposition of Class I utilization standards on such plants proposed by DI. The reasons given by the cooperative for supporting the more stringent pooling standards have been noted in previous findings under this same issue.

Although Kraft, Inc., does not operate a plant that likely would be fully regulated under the Alabama-West Florida order, a brief was filed by Kraft as an interested party. Kraft operates an other order plant that has route disposition in the Alabama-West Florida marketing area and also operates manufacturing facilities that receive milk supplies that are excess to the market's fluid needs. The handler took the position that the proposed supply plant provisions were deficient because a supply plant operator would not get credit for movements directly from the farms of producers as qualifying shipments to distributing plants in addition to transfers to such plants from the supply plant.

There is no basis on this record to adopt the provision described by Kraft. No specific proposal was advanced to cover this issue and the problems that Kraft envisioned with respect to the order's supply plant provisions were not explored on this record.

Kraft also requested in its brief that official notice be taken of two Department of Agriculture publications that predict a steady conversion from manufacturing grade production to Grade A production. The request for official notice is denied. The brief fails to indicate any relevancy of that material to any issue on which hearing evidence was received in this proceeding. Therefore, there is no purpose to be served by taking official notice of the requested USDA publications.

As envisioned for this area, a supply plant would be a plant that is located some distance from the consumption centers and that performs the traditional function of assembling milk and supplying distributing plants with supplemental milk supplies on heavy bottling days. Because of its distance from the market center, this type of plant would find it more efficient to receive milk from the farm at the plant and then transfer it into larger over-the-road tank trucks for transshipment to distributing plants. Accordingly, a "supply plant" should be defined on a functional basis, i.e., transferring fluid milk products to pool distributing plants.

At the time of the hearing the Alabama-West Florida market was not being served by any plant that specializes in the collection of milk for cooling and transshipment to a distributing plant to such an extent that it would qualify for pool status on that basis. In fact, most markets today do not have such plants, which have generally lost their usefulness with the advent of farm bulk tanks, refrigerated trucks, and a modern highway system. Nevertheless, supply plants have continued to be associated with some Federal order markets.

Since not enough milk is produced in the marketing area to furnish the fluid milk needs of handlers, it is necessary to import milk regularly from sources beyond such area. Hence, specific pooling standards for supply plants need to be included in the order in the event such a plant in the future should supply milk for this market to such an extent that it should participate in the marketwide pool.

Under the standards adopted herein, a supply plant would be required to transfer 70 percent of its total receipts from dairy farmers to pool distributing plants in each of the months of September through January and 50 percent of such receipts in each of the other months to qualify as a pool plant. These shipping standards were proposed by DI and supported by SMS.

The Alabama association of milk dealers excepted to the 70 percent shipping standard for supply plants in each of the months of September–January. The handler group asked the Secretary to consider lowering the 70 percent standard provided in the recommended decision to 50 percent in such months. The handlers contended that the 70 percent shipping standard adopted for this market is not consistent with what is provided in this regard under other Federal milk orders.

Kraft, Inc., raised the same point in its exceptions and essentially for the same reason. In that regard, the handler noted that the recommended 70 percent shipping requirement for this market would exceed the shipping requirement under any existing Federal order.

The supply plant shipping percentages adopted for this new order are based on the record of marketing conditions that prevailed in the proposed marketing area at the time of the hearing. The shipping percentages provided under other Federal milk orders were based on conditions in those markets and have no bearing on what is appropriate in the Alabama-West Florida market.

Accordingly, the exceptions by the milk dealers and Kraft on this point must be denied.

Given the anticipated high Class I utilization in this market, the order should not provide, as the order proponent suggested, for automatic pool plant status for supply plants during the months of seasonally higher milk production. The fluid requirements of distributing plants in this market are such that supply plants, when relied upon for milk, should be required each month to transfer certain percentages of their receipts to distributing plants to participate in the order's marketwide pool. Supply plants likely would need to ship milk to distributing plants in this market even during the months when production tends to be heavier, because during the days of peak bottling demand all of the milk supply available for this market will be needed to furnish the needs of distributing plants. For this reason, a supply plant's requirements for pool status should apply on a year-round basis.

Pooling milk through a supply plant may not be the most efficient way to pool milk in this market. Since the record indicates that this market essentially is supplied on a direct-delivery basis, the order's pooling provisions should be so structured that a handler will not have an incentive to pool milk through a supply plant when the milk can move more efficiently to a distributing plant directly from the farm. Requiring a supply plant to qualify on the basis of shipments each month during the year will serve that purpose.

In exceptions to the recommended decision, Kraft urged that automatic pool plant status be afforded a supply plant in the more plentiful milk production months of February through August, if such plant had met the shipping requirements in each of the immediately preceding months of September through January. The handler claimed that such automatic pool plant status would be appropriate under this order because it is commonly provided under other Federal orders. The handler concluded that since particular provisions are found in other orders, it is the general policy of the Secretary that such provisions be adopted in orders generally.

This is not the case. The terms and conditions of the Alabama-West Florida order are based on the hearing record relating to the Alabama-West Florida area, reflecting marketing conditions that prevailed in that area at the time of the hearing. What is provided under other orders with respect to automatic pooling of supply plants was based on the conditions in those markets and has no bearing on whether such status should be provided for supply plants under this order. Moreover, the recommended decision set forth the considerations involved in adopting year-round seasonally varying performance standards for supply plants. No changes from the recommended decision are warranted on the basis of the handler's exceptions on this particular aspect of supply plant pooling. Accordingly, Kraft's viewpoint is overruled.

As indicated, it is reasonable under the market conditions to require a supply plant to deliver at least 70 percent of its receipts from dairy farmers to pool distributing plants during the months when milk supplies tend to be shortest relative to the market's fluid needs. However, a lower shipping percentage (50 percent) for supply plants should apply in each of the months of February through August when milk production is seasonally higher. In these latter months, a smaller proportion of a supply plant's total receipts from producers may be needed at pool distributing plants if their Class I sales remain relatively constant. Furthermore, Class I utilization declines at some pool distributing plants during the summer months when schools are not in session. Accordingly, in the months of heavier milk production, a lower shipping requirement for supply plants is appropriate.

Kraft, Inc., also took exception to the recommended pool supply plant provisions generally. In that regard, the handler contended that "regulatory disincentives would effectively deny supply plant participation in the market."

There is a sound basis in the record for each aspect of the pool supply plant provisions adopted in the recommended decision. Such provisions are supported by testimony and other evidence presented for the record and cited in the decision. The terms and conditions adopted for pool supply plants are based on the marketing conditions which prevailed at the time of the hearing. There is no basis to change any of those findings or conclusions of the recommended decision with respect to pooling supply plants on the basis of Kraft's exceptions.

Specifically, with respect to the pool supply plant provisions, Kraft reiterated its view that supply plants should be allowed to count as shipments from the supply plant, milk diverted from such plant that is delivered directly to distributing plants from the farms of producers.

Kraft also contended that the Deputy Administrator should have explained more thoroughly why certain efficiencies in marketing milk would be permitted for cooperatives under the new order but denied for proprietary supply plant operators, i.e., a cooperative could count direct deliveries to qualify its balancing plant but a supply plant could not count such deliveries to qualify its supply plant.

As indicated in the recommended decision, there is no basis in the record for allowing direct-shipped milk to count as plant shipments for pool qualification purposes of a supply plant. This facet of pooling a supply plant did not come up at the hearing. Hence, there is no basis to adopt such a provision. No changes from the recommended decision with respect to this point are warranted on the basis of the handler's exceptions.

In discussing the pooling issue at the hearing, a witness for Dairymen, Inc., testified that under AMP's proposed shipping standard for supply plants the DI plant at Lewisburg, Tennessee, would have qualified as a pool supply plant in certain past months on the basis of shipments to distributing plants that would be regulated under the new Alabama-West Florida order. Since significant quantities of milk have been shipped from the Lewisburg plant to Alabama distributing plants from time to time, and because the Alabama market is the primary recipient of supplemental shipments from such plant, he contended that the Lewisburg plant should be regulated under the proposed Alabama-West Florida order.

To accommodate this situation, DI modified its hearing notice proposal for a supply plant operated by a cooperative and proposed that a cooperative be permitted to pool a balancing plant, upon request, if the association delivers 60 percent or more of its member producer milk to pool distributing plants during the month. The 60 percent delivery requirement could be met by deliveries directly from the farm and/or by transfers from the association's plant under the cooperative's proposal.

Two other cooperatives supplying the market (AMP and SMS) opposed the DI proposal essentially for the same reason, i.e., it would allow, in their opinion, the cooperative to "ride" the pool by associating unneeded supplies of milk with the marketwide pool, thereby depressing the order's uniform prices. Thus, in their view, to the extent that the adoption of a balancing plant provision would permit DI to do this, the returns to the member-producers of these two cooperatives would be reduced.

The record indicates that cooperatives have been balancing milk supplies for this market. An exhibit comparing the proponent cooperative's deliveries to fluid milk processors who have independent producers with the association's deliveries to such processors without independent producers shows that the variation in the average daily delivery by AMP to processors with independent producers was almost three times as great as it was for deliveries to processors without independent producers. For example, during September 1978–August 1979, the average daily deliveries by AMP to processors without independent producers ranged from a low of 91 percent of the annual average in July to a high of 104 percent of such average in April (a difference of 13 percentage points). On the other hand, during that same period, the cooperative's average daily deliveries to fluid milk processors with independent producers ranged from a low of 81 percent of the annual average in June and July to a high of 117 percent in October (a difference of 36 percentage points).

A greater variation in deliveries to a distributing plant was experienced by AMP if such plant had its own producers. This resulted because as the plant's own producers increase their production, less milk is needed from the cooperative. When the cooperative's milk is displaced like this by milk from the plant's own producers, oftentimes the cooperative's displaced milk must be hauled long distances to a manufacturing plant at the expense of the association. Conversely, when the production of a plant's own producers decreases, the cooperative is called on to supply more milk. If the cooperative is short of milk overall in supplying its customers at this time, it may be necessary for the cooperative to import milk from beyond the local supply area to fulfill the fluid needs of handlers, which also can be costly to the cooperative.

The Lewisburg plant is a large manufacturing plant that receives substantial volumes of milk that are excess to the fluid milk needs of other Federal order markets throughout the Southeastern United States. It has the capacity to handle about 900,000 pounds of milk per day. Although considerable milk is transferred from the plant to fluid milk outlets during certain months of the year, the plant is primarily engaged in manufacturing butter and nonfat dry milk.

The Lewisburg plant is a fully regulated pool plant under the Nashville order, qualifying as a cooperative balancing plant. Unlike the Alabama situation, very few if any shipments from the Lewisburg plant are made to distributing plants regulated under the Nashville order. A significant portion of the receipts at such plants are diversions off of other Federal order markets in the Southeast. In such cases, the diverted milk may be considered producer milk under the other order rather than a direct receipt of producer milk at the Lewisburg plant under the Nashville order.

The new Alabama-West Florida order should accommodate the pooling of the Lewisburg plant as a cooperative balancing plant. Although the Lewisburg plant is located in a major part of this market's procurement area, it oftentimes may be more economical to move the milk directly from the farm to an Alabama distributing plant than it is to haul the milk to Lewisburg, receive it there at the cooperative's plant solely for the purposes of qualifying the plant, reload it and then haul it to a distributing plant, which in some cases is closer to where the milk was produced. However, when milk of some producers is temporarily not needed at distributing plants, their milk could maintain pool status by being delivered from the farm directly to the balancing plant, since it would be a pool plant. The plant thus would be an assured outlet for reserve milk without involving arrangements under which the producers' milk would need to be diverted from distributing plants to maintain producer milk status under the order. Affording pool status to the balancing plant also would facilitate the transfer of milk from the cooperative's balancing plant to pool distributing plants.

Although milk should be moved when possible directly from the farm to distributing plants, there are occasions when balancing plants are called upon to make supplemental shipments. Such shipments, however, often may not be in sufficient amounts to qualify the plant as a supply plant. Nevertheless, the plant should qualify for pooling as long as the cooperative has demonstrated an adequate degree of supply performance for the market as a whole.

The cooperative should be permitted to move the milk in the least costly manner (either directly from the farm and/or by transfer from its balancing plant). In certain cases, this could result in significant savings to the cooperative in plant handling and transportation costs. In view of this, the cooperative's deliveries from the farm and/or transfers from the plant should count as qualifying shipments in determining whether a balancing plant meets the minimum delivery requirement. This will provide maximum flexibility to the cooperative in moving its milk supplies to customers.

It is necessary that there be a reasonable demonstration that the milk pooled through balancing plants is a part of the regular market supply. Milk should not be permitted to be associated with the market merely for manufacturing purposes since this would reduce returns to producers and discourage the production of an adequate supply of milk by those producers regularly supplying the fluid market. A balancing plant's pool status should be contingent on its function with respect to the milk supply for the fluid market and this is reasonably reflected in how much of the cooperative's total member producer milk is delivered to pool distributing plants.

The record indicates that, on a year-round basis, 80 percent or more of DI's member producer milk under the proposed order would be delivered to distributing plants that will be regulated under the new Alabama-West Florida order. Based on marketing conditions, the recommended decision found that at least 70 percent of the producer milk member producers should be delivered each month to pool distributing plants to qualify a cooperative's balancing plant for pooling without requiring that plant to separately meet the shipping requirements of a pool supply plant. It was found that such requirement would assure a substantial association of the cooperative's total producer milk supply with the market's fluid use and thus would minimize the opportunity for any cooperative to pool unneeded milk through the balancing plant.

Dairymen, Inc., however, excepted to the Department's recommendation for a 70 percent delivery requirement during each of the months of February through August. During these months, supply plants would be required to transfer 50 percent of their receipts from dairy farmers to pool distributing plants to qualify for pool plant status. The association contended that it should not be required to furnish a greater percentage of its milk supply to pool distributing plants in order to pool its balancing plant than would be required of a supply plant to qualify as a pool plant in such months. In conclusion, DI stated that it would support the same 50 percent delivery requirement for its balancing plant as would be the applicable shipping percentage for supply plants during the February-August period.

During these months, milk production generally is higher seasonally and a smaller proportion of the association's member milk will be needed at pool distributing plants if their Class I sales remain relatively constant. In addition, the Class I needs of some distributing plants will be lower during the summer months when schools are not in session. In recognition of these circumstances, a lower delivery requirement would be more appropriate for cooperatives to qualify a balancing plant. The lower delivery requirement in such months would provide cooperatives greater flexibility in disposing of the market's reserve milk supplies. It also would be consistent with the lower shipping requirements for supply plants and the lower "touch-base" requirements for individual producers during these months.

DI's suggestion in this regard should be accommodated in this final decision. Accordingly, seasonally varying delivery requirements of 70 percent in each of the months of September-January and 50 percent in each of the other months would be applicable to cooperatives for the purpose of qualifying a balancing plant for pool status. The order is appropriately changed to reflect this consideration.

In its exceptions to the recommended decision, SMS repeated its opposition to the balancing plant provisions in general. The cooperative reiterated its position taken at the hearing and in its brief that adoption of such provisions will permit DI to pool under this order milk which is excess to the fluid needs of markets throughout the Southeast, thereby jeopardizing the blend price for this market.

Even though the delivery requirements for pooling a balancing plant are lowered somewhat in certain months from the recommended decision, it is expected that the overall standards of performance adopted herein for plants, handlers and producers to qualify milk for pooling, in conjunction with the base plant provisions, will tend to assure the integrity of the new order. Hence, the cooperative's exception is overruled.

As DI suggested, the pooling of the cooperative's balancing plant on a request basis would be conditioned on such plant's not qualifying as a pool distributing plant or a pool supply plant under this or any other Federal order. If a balancing plant meets the performance requirements as a distributing plant or a supply plant under this or any other Federal order, there would be no reason to request status for such a plant under this order as a pool balancing plant. Also, the balancing plant must maintain approval by a duly constituted regulatory agency to handle Grade A milk. Such a provision is necessary to assure that the plant can be depended upon for supplemental supplies when they are needed by distributing plants. Since the Alabama-West Florida order as adopted herein would not require any minimum shipments to the market from a cooperative's balancing plant, it is conceivable that the plant might not take the necessary steps to maintain its health approval, thereby precluding the plant from being able to transfer milk from the balancing plant to pool distributing plants.

The performance standards adopted herein for the various types of pool plants should be adequate to insure that the milk pooled under the Alabama-West Florida order is associated with the market's fluid use. They are sufficient to prevent the development of Grade A milk supplies and the association of such supplies with the order solely for the purpose of obtaining milk for other than Class I use. The provisions are adequate considering the proposed market's Class I needs and the historical utilization of producer milk in such area.

Certain plants should be excluded from "pool plant" status even though they meet the pooling standards of the order. For instance, a distributing plant possibly could meet the pooling requirements of this order and also another Federal order in the same month. Such a situation could develop in particular between this order and the New Orleans-Mississippi order (Order 94) because the low minimum in-area sales requirement (1500 pounds per day on routes) adopted herein is also provided for in the adjoining New Orleans-Mississippi market. Complementary provisions between the two orders should provide administrative guidance to resolve conflicts regarding regulation of a plant that qualifies for pooling under both Federal orders.

A distributing plant that has route disposition in both marketing areas should be regulated in the market in which such plant has the greater route sales. However, if a plant that has been regulated under this order should have greater route disposition in another marketing area, the plant should retain pool plant status under this order until the third consecutive month in which it has greater route disposition in the other marketing area. This procedure would limit the casual, disruptive shifting between orders on a month-by-month basis that can occur when intermarket distribution results in qualifying a distributing plant for pool status under more than one order.

Similarly, the new order should recognize that lock-in provisions for distributing plants also are provided under other orders. In that regard, a complementary provision is adopted in the new order to allow a distributing plant to continue to be regulated under the other Federal order even though it has greater route sales in the Alabama-West Florida marketing area. In this situation, a distributing plant in Order 94, for example, would retain its pool status under Order 94 until the third consecutive month its route disposition in this marketing area was greater than in the Order 94 marketing area.

A supply plant that meets the shipping requirements of this order and another Federal order but which has greater shipments to distributing plants regulated under the other order should be pooled under the other order. Also, a supply plant pooled under another Federal order on the basis of its automatic pool plant status would not be a pool supply plant under the Alabama-West Florida order even if such plant met the shipping requirement under this order.

In addition, certain types of plant operations that are exempt from the pooling provisions of the order should be specifically excluded from the order's pool plant definition. In that regard, the term "pool plant" shall not apply to a producer-handler's plant or a governmental agency plant.

Nonpool plant. The new order should include a definition of "nonpool plant." Under the order, a nonpool plant would mean any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The "nonpool plant" definition sets forth five specific categories of plants that cannot be pool plants under the order. They are adopted essentially as proposed by the order proponent.

A definition of "nonpool plant" is provided in the new order to facilitate the formulation of the various order provisions as they apply to such a plant. The various types of nonpool plants are described further hereinafter.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

A plant operated by a "producer-handler," as defined in this or any other other Federal order, would be considered a nonpool plant. Due to the nature of the operation, as discussed later, such a plant is specifically exempt from pool status.

A "partially regulated distributing plant" also would be considered a nonpool plant. A partially regulated

distributing plant would be a plant that does not qualify as a pool distributing plant, an other order plant, a producer-handler plant, or a governmental agency plant. Generally, such a plant would be a distributing plant that has route disposition in the defined marketing area, but not to an extent that would qualify it for pool status under the order.

The Secretary has noted that the provisions of the proposed order inadvertently would not have fully carried out the intent of the recommended decision with respect to partial regulation of a filled milk plant that would not meet the definition of a "distributing plant." This oversight is corrected in the order attached to this decision by revising the definition of a "partially regulated distributing plant" to specify that it is a nonpool plant that has route disposition in the marketing area during the month.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or a governmental agency plant. In essence, it is a plant that transfers milk to pool distributing plants, but not to an extent that would qualify it for pool status under the order (less than the specified percentage of its receipts from dairy farmers is transferred to pool distributing plants).

As suggested by the order proponent and adopted herein, a distributing plant operated by a governmental agency (Federal, state, or local) would also be included among the nonpool plants specified in the order.

The proponent's witness testified that he was not aware of any distributing plant operated by a governmental agency which would qualify for exempt status under the new order. However, he indicated that such a self-contained operation which runs its own dairy farm, processing plant, and distributes such milk at a plant store or on a college campus should not be fully regulated under the order. He further testified that such an operation would not be a competitive factor in the overall market and for this reason should not be pooled. Accordingly, as suggested, the order should recognize the possibility of such operations in the future by extending nonpool plant status to them.

Handler. The impact of regulation under an order is primarily on handlers. A handler definition is necessary to identify those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to producer milk that is picked up at the farm and delivered to a nonpool plant as diverted milk for the cooperative's account;

(3) A cooperative association with respect to milk of a producer that is picked up at the farm and delivered to a pool plant of another handler for the cooperative's account;

(4) The operator of a partially regulated distributing plant;

(5) a producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the area; and

(7) The operator of an unregulated supply plant.

All of the categories of handlers listed above, with the exception of the operator of an unregulated supply plant were proposed by the order proponent and are common to most milk orders. Each person who may have a reporting requirement or may incur a financial obligation under the order should be disignated a handler. This will assure that all information necessary to determine a person's status under the order can be readily determined by the market administrator. For this reason, the operator of an unregulated supply plant and the other persons listed above should be defined as handlers under the new order.

A pool plant operator who receives milk from producers should be the responsible handler for such milk. As the responsible handler, such person should report, in the detail prescribed by the market administrator, the quantities of milk received from each producer and each other source. Such operator also should be responsible for reporting certain other information deemed necessary by the market administrator in order to determine the utilization of producer milk. Such handlers should be responsible for making payments to producers, cooperative associations and the producer-settlement fund in accordance with the terms of the order.

A cooperative association should be a handler under the order for farm bulk tank milk moved by the cooperative to a pool plant or diverted to a nonpool plant. In the case of such movements to a pool plant, a cooperative should be the handler for milk received for its account from the farm of a producer that is delivered to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, should there be a mutual agreement between the cooperative and the pool plant operator whereby such operator agrees to be the handler for the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the cooperative need not be the handler for such milk.

Requiring a cooperative to be the handler on milk picked up for its account at the farm of a producer and delivered to a pool plant provides a practicable basis for the complete accounting of such milk. It also recognizes the current handling arrangements used by the cooperatives operating in the market in allocating their milk among distributing plants.

A witness for the order proponent testified that some plants which would be fully regulated by the proposed order buy their milk supply from the cooperative on the basis of weights and tests taken at the farm by the association. In such circumstances, it is only the cooperative that has the opportunity to measure and sample the milk of individual producers that is received at a plant. In the absence of any agreement by the plant operator to be the handler on such milk, the cooperative must be the responsible handler for the milk as it leaves the farm.

Under the terms of the attached order, the pool plant operator's obligation on milk purchased from a cooperative as a "bulk tank handler" is the same as for producer milk received directly from the farm of an individual producer. The plant operator must account to the pool for the milk according to the classification assigned to the milk based on the plant's utilization. The pool plant operator in turn settles with the cooperative on the basis of the uniform price for the milk. Under this arrangement, the pool plant operator is obligated to the producer-settlement fund, the administrative fund and the cooperative on the quantity of milk the cooperative delivers to such handler's pool plant directly from the farms of producers. The cooperative, in turn, is obligated to the producer-settlement fund and administrative fund on only that portion of milk picked up for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the

actual use of milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk be placed directly on such pool plant operator.

The attached order also provides that a cooperative could be a handler on the milk of a producer which it diverts for its account from a pool plant to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist the principal cooperatives in balancing supplies among the several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative expense funds on the diverted milk. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation on such milk under the order.

The new order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of members for delivery to a pool plant or diversion to a nonpool plant. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to market his or her milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the new order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives "may deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than those "handled by it for members."

Producer-handler. The order should exempt "producer-handlers" from the pricing and pooling provisions of the order.

Experience under Federal orders has demonstrated that effective regulation can be insured without the full regulation of individuals who essentially process and distribute milk produced on their own farm and who buy no milk from other dairy farmers. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operation and of disposing of any daily or seasonal surpluses they may produce. Because of the costs associated with producing all of the milk needed for their fluid sales and handling the reserve supplies, producer-handlers seldom are able to gain any competitive edge in the marketplace by virtue of their exempt status.

Although the specific order language adopted with respect to producer-handlers differs somewhat from what the order proponent suggested, the basic intentions of the cooperative are accommodated under the provisions adopted herein.

As proposed by the order proponent and adopted herein, a "producer-handler" would be any person who operates a dairy farm and a distributing plant from which there is route disposition in the marketing area. Such persons would be permitted to supplement milk production on their own farms with purchases from pool plants and plants fully regulated under other Federal orders. A producer-handler operation would lose its exempt status by disposing of milk from other sources in a fluid milk product (other than by the fortification process). Such person also must satisfy the market administrator that the management and operation of the dairy farm and processing plant are at the personal risk of the producer-handler.

A question was raised at the hearing in connection with the cooperative's proposal to permit a producer-handler to buy unlimited quantities of fluid milk products from pool plants. It is intended that producer-handlers not have a significant advantage over fully regulated handlers when they are permitted to purchase supplemental milk. Since the milk transferred from a pool plant to a producer-handler would be accounted for under the order as a Class I disposition of the pool plant, no significant advantage would result for the producer-handler. Nevertheless, the principal basis for excluding producer-handler operations is that they are primarily self-sufficient, i.e., they bottle and distribute essentially their own milk production. Thus, it is anticipated that supplemental purchases would be relatively small.

The record indicates that there are only two operations that would qualify as producer-handlers under the proposed order. One is located in the Huntsville, Alabama, area and another is in the Dothan, Alabama, area. Both were described as relatively small operations. There is no indication as to whether these operations obtain supplemental supplies from other sources. While there is no basis in this record for limiting supplemental purchases, the matter can be reviewed later in light of actual operating experience under the order.

There was considerable discussion at the hearing about whether a producer-handler also should be permitted to buy supplemental milk from pool plants regulated under other orders. A witness for the order proponent testified that he did not believe a producer-handler could gain a competitive advantage over other pool plant operators on such purchases, since the milk would have to be accounted for at the Class I price under the other order and transportation costs would have to be added. The cooperative preferred, however, to limit supplemental milk purchases by producer-handlers to pool plants regulated under this order because such purchases would enhance this market's uniform price. However, because no competitive advantage can be obtained when a producer-handler buys fluid milk products from plants regulated under other Federal orders, it is provided herein that supplemental purchases by producer-handlers may be made from pool plants under this order and from plants fully regulated under other Federal orders.

A producer handler's exempt status would be conditioned on certain other methods of operation by such a person. For instance, such a handler would not be permitted to reconstitute or convert milk products into fluid milk products. It is necessary to preclude a producer-handler from reconstituting or converting milk products into fluid milk products because such products have a surplus value and, if such activities were permitted, would place the producer-handler at a significant competitive advantage over regulated handlers in terms of product costs. This would not, however, prevent a producer-handler from buying Class II and Class III milk products from any source for distribution in the same form along with such handler's fluid milk products. Nor would it prevent a producer-handler from increasing the nonfat milk solids content of the milk produced on such person's own farm or purchased from pool plants by fortifying a fluid milk product.

A producer-handler's status also would be contingent on such person proving to the market administrator that the operation of the dairy farm and processing plant in question are at his/her risk. An exemption from the pooling and pricing provisions for such a person is based upon the basic self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or plant. All resources necessary and incidental to his/her own farm production of milk must be his/her personal risk. Similarly, all risk associated with the operation of the processing plant must be that of the producer-handler.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition adopted herein follows closely the one proposed and supported by the order proponent.

Producer status under the order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is received at a pool plant directly from the producer's farm or is picked up at the farm by a cooperative as a bulk tank milk handler for delivery to a pool plant. Producer status also should be accorded to a dairy farmer who has an established association with the market and whose milk is diverted from a pool plant to a nonpool plant by a cooperative association or a pool plant operator, either for fluid use or for surplus disposal.

To establish a producer's association with the market and to insure the marketability of such producer's milk, it is reasonable to require that a dairy farmer's milk be received at a pool plant each month to qualify such dairy farmer's milk for diversion to a nonpool plant. The "touch base" requirement is discussed more fully in the findings dealing with the definition of producer milk under the new Alabama-West Florida order.

The order would provide an exemption for producer-handler operations and for plants operated by a governmental agency. Since these operations are exempt from the order's pricing and pooling provisions, milk which is excess to the needs of such operators should not be treated as producer milk when it is moved directly from the farms of such operators to a pool plant. Accordingly, the producer definition adopted herein would specifically exclude producer-handlers and governmental agency plants. Any such milk delivered to a pool plant from such operations would be other source milk.

In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should exclude a dairy farmer with respect to milk which is received at a pool plant under this order by diversion from a pool plant under another order if the dairy farmer is a producer under the other order with respect to such milk and the milk is allocated to Class II or Class III use under this order. Also, the definition should exclude a dairy farmer with respect to milk which is diverted to a pool plant under another order from a pool plant under this order if any portion of such person's milk is assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the order. The definition adopted herein contains the basic features suggested by the order proponent.

"Producer milk" would include milk of a producer that is (1) received at a pool plant directly from such producer by the operator of the plant; (2) received by a cooperative association acting as a bulk tank handler; or (3) diverted by a cooperative association or a pool plant operator from a pool plant to a nonpool plant that is not a producer-handler plant.

When milk is not needed at a pool plant, it usually is diverted to a nonpool plant where it is used to produce manufactured milk products. Hence, the order should provide for "diversions" to nonpool plants by pool plant operators and cooperative associations within certain specified limits to insure that the pool distributing plants in the market are adequately supplied first. With respect to the limitations on such movements, a portion of an individual producer's milk would have to be received at a pool plant each month to qualify the producer's milk for diversion to nonpool plants during the month. In addition, handlers (pool plant operators and cooperative associations) would be limited in the total quantity they may so divert each month.

The order proponent suggested that pool plant operators and cooperative associations be permitted to divert an amount equal to one-third of the producer milk physically received at pool plants during the months of seasonally short milk production. In support of the proposal, the proponent's witness testified that the proposed diversion allowance would be adequate to accommodate the surplus disposition requirements of handlers supplying milk for the market. He also indicated that his producer group would rarely if ever need to divert as much as 25 to 30 percent of its milk supply in any month.

Proponent further suggested that 2 days' production of each producer should be received at a pool plant during each of the flush production months of March through July to qualify such producer's milk for diversions to a nonpool plant during each such month. During each of the months of August through February, proponent suggested that the requirement be 6 days' production.

The witness for proponent testified that these are minimum requirements and he would not be opposed to higher "touch-base" requirements for individual producers. He also stated that based on his knowledge of supply-demand conditions which exist in the general area, the milk of all producers will be needed more than half of the time to supply the fluid milk requirements of the market's distributing plants. He further testified that insuring the delivery of the minimum days' production of each producer's milk to pool plants each month would not result in additional transportation costs for the cooperative.

DI proposed a "touch base" requirement for each individual producer of 4 days' production in each of the months of February through August and 10 days' production in each of the other months of September through January. In support of its higher delivery requirements to pool plants by individual producers, a witness for DI testified that if producers are a regular part of the necessary reserve supply for this market, it would result in little, if any, additional transportation costs to deliver the minimum number of days' production of each producer's milk to pool plants each month. He contended that when milk supplies not closely associated with the market's fluid milk needs become attached to the market it is costly to the cooperative in terms of a reduced blend price. The DI witness stated that the cooperative will most likely have to ship production of 20 or more days of each producer's milk to pool plants during the months of September through January to furnish the fluid milk requirements of its pool distributing plant customers.

An independent producer proposed that at least one-half of an individual producer's milk should be required to be received at a pool plant each month to qualify such dairy farmer's milk for diversion to nonpool plants. He testified that, in his judgment, the proposed

touch-base requirement of 2 days' production (one delivery for producers on every-other-day delivery) was inadequate. He contended that higher delivery requirements would be in his best interest in addition to the best interests of other Alabama producers.

In its post hearing brief, the order proponent (AMP) supported the DI touch-base requirements of 4 and 10 days' production for individual producers. Both cooperatives also repeated their contention that these requirements would not result in additional hauling costs to their associations because more than the minimum number of days' production for each individual producer would be received at pool plants.

Southern Milk Sales, Inc., in its brief urged that the touch-base requirements be 70 percent of a producer's milk (21 days' production) in the fall months and at least 50 percent (15 days' production) in the spring months to protect the integrity of the blend price and to assure consumers an adequate supply of milk to meet their needs.

The limits on total diversions of producer milk to nonpool plants by a handler should be established at a rate that will accommodate the market's needs to efficiently dispose of milk not needed for fluid use. At the same time, it is necessary to assure that milk supplies will be available for fluid use.

It is apparent from the testimony that cooperatives could meet their needs for handling reserve milk dispositions with a total diversion limit of 20–30 percent of their total supplies. DI, for example, indicated that about 80 percent of its producers' milk would be needed for fluid use. AMP indicated that diversions would rarely be as much as 25 percent. Southern Milk Sales' suggested touch-base requirement of 70 percent for individual producers in the short production months would leave 30 percent of their production that would not be required to be delivered to pool plants. There was no testimony by handlers on the need to divert the milk of independent producers.

Based on the evidence noted above, it is concluded that handlers' diversions of milk to nonpool plants should not exceed an amount equal to 30 percent of the milk physically received at pool plants during the month. This is slightly less than the order proponent proposed (30 percent of physical deliveries to pool plants is equivalent to 23 percent of total supplies). Nevertheless, it should adequately serve the purpose of providing an efficient method for disposing of milk not needed for fluid use in the market.

A pool plant operator, other than a cooperative association, should be allowed to divert any milk that is not under the control of a cooperative that is diverting producer milk during the month. The total quantity of milk that such plant operator may divert during any month should be limited to 30 percent of the producer milk physically received at such plant during the month. Likewise, a cooperative association should be allowed to divert milk for its account. In this case, the percentage limit should be 30 percent of the cooperative association's producer milk that is delivered to and physically received at pool plants during the month.

The diversion allowance for handlers should apply in each month. The record indicates that a 30 percent allowance will accommodate handlers' needs in the flush production months, and thus no problems should be experienced by such handlers with the same allowance in the other months. In addition, since plants will be required to meet specified performance standards to attain pool status each month under the new order, a diversion allowance should be specified for handlers on a year-round basis.

The Alabama association of milk dealers excepted to the monthly diversion allowance of 30 percent provided in the recommended decision for pool plant operators and cooperatives. The handler group claimed that a distributing plant could lose a Class I sales contract for a short time and may need to divert milk in excess of the allowance as a result. The handlers suggested a monthly allowance of 50 percent.

The record indicates that a diversion allowance of 30 percent is expected to accommodate the efficient movement of milk supplies in excess of the market's fluid needs by handlers. The higher allowance suggested by handlers is not supported by any evidence in the record. Accordingly, the exception is overruled.

The diversion allowance provided herein for handlers establishes the maximum quantity which cooperatives and pool plant operators may divert each month. Having set that allowance at an appropriate level, the individual producer "touch-base" standard should be set at a minimal level in order to allow handlers the maximum flexibility to receive milk from producers in the least costly manner.

Marketing efficiency is optimized when a handler can decide, with the minimum amount of interference, how and where to move milk supplies under such handler's control. Producers supplying a particular pool plant can be widely dispersed. For this reason, a handler may receive milk from several farm routes, some of which likely would be nearer to the plant than others. Thus, it would be more economical to receive the milk of those producers located closest to a handler's plant on a regular basis and to receive the milk of more distant producers only when the handler needs the extra milk. Of course, the reverse would also be true for the disposal of the reserve milk. The handler would want to divert to nonpool manufacturing plants the milk of the distant producers more often than the milk of those producers who are located closest to the pool plant, assuming that the manufacturing plant is located in the outer reaches of the milkshed or beyond, as is likely the case.

It is reasonable, however, that the order include a minimal "touch base" provision that would require each producer's milk to be received at a pool plant each month. For this purpose, DI's proposed requirements, which would vary seasonally, should be adopted. To qualify a producer's production for diversion to nonpool plants during the month, 10 days' production would have to be delivered to a pool plant during each of the months of September-January and 4 days' production would be required in each of the months of February through August. In view of the anticipated supply-demand situation in the proposed market, the touch-base requirement should apply throughout the year. This procedure is consistent with requiring pool plants to meet monthly performance standards and specifying monthly diversion allowances for handlers.

As indicated, a seasonally higher requirement would apply in the months of September through January and a lower requirement would apply in the months of February through August. The peak demand for milk in this market occurs on at least four days each week, or a minimum of 16 days each month. On these days, practically all of the available milk of producers associated with the market is needed at distributing plants. It is anticipated that producers on every-other-day pick-up would make at least 8 deliveries (16 days' production) to distributing plants on such peak days. Thus, a touch-base requirement of 10 days' production (five deliveries for producers whose milk is picked up every other day) each month of September through January is reasonable. Such a standard is adequate to establish that a producer is eligible to have milk diverted to a nonpool plant during the months when production is

short relative to the demand for Class I milk.

During the months of February through August, only four days' production of each producer would have to be received at a pool plant to qualify such producer's milk for pool participation. During these months, the market's fluid needs generally would require a lesser proportion of the available milk supply. Thus, greater flexibility in disposing of the reserve milk supplies would be desirable, and would be provided by not requiring as much of each producer's milk to be delivered to a pool plant.

DI suggested that if a supply plant's qualification is based solely on shipments to distributing plants as the order proponent suggested, then the individual producer touch-base requirement should be met by deliveries to pool distributing plants only. It is unnecessary, however, to specify that only deliveries to pool distributing plants may establish a producer's association with the fluid market.

The Alabama association of milk dealers excepted to the recommended touch-base standard of 10 days' production for individual producers during each of the months of September–January. The association contended that there is no need for the order to require that an individual dairy farmer's milk be physically received at a pool plant that often during these months to associate the milk of such producer with the plant. As an alternative, the handler group suggested in its exceptions that the 4-day standard recommended for the months of February–August be applicable in each month.

A touch-base requirement is not included in the order to associate a dairy farmer's milk with a particular pool plant. Rather, it is provided to demonstrate that a producer's milk is associated with the market's fluid milk needs. Accordingly, for an individual producer's milk to be eligible for diversion to a nonpool plant during any month under the order, a minimum amount of such dairy farmer's milk must be received at a pool plant each month. If the monthly minimum touch base requirement specified in the order is met during the month, it is considered that the dairy farmer has furnished a portion of the market's fluid needs and is entitled to participate in the marketwide pool with respect to diversions to nonpool plants during the month also.

Although the proponent of the order proposed touch-base standards of two and six days' production in the hearing notice, the cooperative took the position at the hearing that they would not be opposed to higher standards. In its brief, the proponent cooperative supported DI's proposed higher touch-base requirements of 4 and 10 days' production for individual producers. Moreover, the evidence received at the hearing indicated that the Class I needs of handlers would be a greater proportion of all available supplies in the September–January period. Hence, a touch-base requirement of at least 10 days' production during September–January is fully supported by the record evidence on this issue.

Along the same line, Kraft, Inc.'s exceptions claimed that the provisions of the recommended decision in many respects required inefficient milk handling practices. The handler charged that such provisions "* * * cannot be justified or reconciled on need to attract milk production to the market, but rather intended to limit the quantity of available milk production which may participate in the marketwide pool." In this regard, the handler maintained that under the recommended touch-base requirements marketing efficiency would not be optimized, i.e., handlers would not be permitted to move milk around in the least costly manner.

It is recognized that performance standards under an order may result in some loss of marketing efficiency, and it is desirable, of course, to keep such loss to a minimum. Nevertheless, such standards serve an essential role in the regulated market. The standards adopted herein are based on the marketing conditions found in this market and represent the best judgment of what is appropriate for the area.

Kraft further contended that cooperative and proprietary handlers are not treated uniformly under the touch-base requirements of the recommended decision. In that regard, if a cooperative moved milk to its balancing plant for manufacturing, such milk is considered a receipt at a pool plant and all producers on the load get credit for meeting the order's touch-base requirement. However, if a proprietary handler moved milk off the market to a manufacturing plant, it is considered a diversion to a nonpool plant and none of the producers on the load get credit for touching base. Kraft contended that proprietary pool plant operators are discriminated against in such instances.

The difference depicted above in the application of the touch-base provisions does not reflect discrimination against proprietary handlers, as Kraft contends, but merely different operating conditions. If a proprietary handler operated manufacturing facilities at a pool supply plant, the handler then would be operating in a manner comparable to the cooperative's manufacturing operation cited above. In this case, the milk of the proprietary handler's producers that is manufactured at the supply plant would be considered a receipt at a pool plant.

A supply plant's pool status would be determined solely on the basis of shipments to distributing plants. If the supply plant meets the shipping requirements of the order and thus becomes a pool plant, it has demonstrated an adequate association with the fluid market. Dairy farmers delivering milk to the supply plant are thus associating themselves with the fluid market.

The order should provide a procedure to be followed for determining pool status of the milk if a pool plant operator or cooperative association diverts milk in excess of the percentage allowance specified in the order. As adopted herein, the excess quantity of milk would not qualify as producer milk and would not be priced under the order. In such cases, the diverting handler would be required to designate the dairy farmer deliveries that should not be considered producer milk. Absent such designation, no milk diverted by the handler would be producer milk. This method of identifying overdiverted milk was proposed by the order proponent.

Also, the order should provide the method suggested by the order proponent to determine which producers' milk should not be qualified as producer milk when a cooperative's diversions from a pool plant to nonpool plants would cause such plant to lose its pool status. In such cases, the cooperative should be responsible for identifying which dairy farmers' milk would not be producer milk. Since the cooperative is the accountable handler to the pool for the producers' milk, such handler is in the best position to identify those producer deliveries that would not be producer milk for purposes of assuring continued pool status for the plant involved.

If the cooperative fails to designate the dairy farmers' deliveries that are to be excluded as producer milk, no milk diverted by the cooperative to nonpool plants would be considered producer milk. This procedure is consistent with the method used to specify which dairy farmer deliveries should not be considered producer milk when a handler diverts milk in excess of the percentage allowance specified in the order.

As proposed by AMP, milk diverted from a pool plant to a nonpool plant would be priced at the location of the

nonpool plant where the milk is physically received. If diverted milk were priced on the basis of the pool plant from which diverted, different prices could apply for milk received at a pool plant and a nonpool plant at the same location. The pricing method adopted herein is consistent with the requirement of the Act that milk be uniformly priced to all handlers based on the location at which delivery of the milk is made.

The hearing notice included a handler proposal to permit diversions between pool plants. At the hearing a handler spokesman indicated that the proponents had decided to withdraw their proposal.

Other source milk. An other source milk definition should be adopted for the new Alabama-West Florida order. In addition to milk received from producers, a regulated pool plant may receive milk or milk products from other sources. An "other source milk" definition will serve to specifically identify the various categories of such receipts.

The order proponent suggested that the "other source milk" definition that was adopted when a uniform milk classification plan was provided for 39 Federal order markets on August 1, 1974, be included in the new order. There was no opposition to this proposal, which is adopted.

As provided herein, "other source milk" would be all skim milk and butterfat in a handler's receipts of fluid milk products or bulk fluid cream products from any source other than producers, cooperative association handlers, or pool plants. It also would include a handler's receipts of fluid cream products in packaged form from other plants. In addition, any milk products (other than fluid milk products, fluid cream products and products produced at the plant in the same month) from any source which are reprocessed, converted into, or combined with another product in a handler's plant during the month would be considered a receipt of "other source milk." Receipts of milk products (other than fluid milk products or fluid cream products) for which the handler fails to establish a disposition also would be included under the "other source milk" definition.

Although fluid cream products would be Class II products and would not be included in the order's fluid milk product definition, bulk fluid cream products should be treated in the same manner as fluid milk products for purposes of applying the other source milk definition. This procedure will facilitate the application of the other provisions of the order.

Receipts of fluid cream products, eggnog or yogurt (or any filled product resembling such products) in packaged form from other plants would be considered other source milk. These products are Class II under the classification plan provided for this market. Although no handler obligation would apply under the order provisions adopted herein with respect to such receipts, it is desirable for accounting purposes that receipts of packaged Class II products be defined as other source milk. This accounting technique will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest class of utilization as is provided in some cases for other types of other source milk.

The order should provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant shall be considered as other source milk. For accounting purposes, such manufactured products would include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the provisions adopted herein directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

The order also should provide that products manufactured in a pool plant during the month and then reprocessed, converted into or combined with another product in the same plant during the same month not be defined as other source milk. For example, assume that a handler makes condensed skim milk from producer milk and then uses the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

Any disappearance of manufactured milk products for which the handler fails to establish a disposition would be considered other source milk. It is reasonable that each handler be required to account for all milk and milk products received or processed at the handler's regulated plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over competitors who properly account for all of their receipts of milk and milk products. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

Filled milk. Filled milk should be defined as any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

This definition and the treatment afforded such products under the order are consistent with the provisions and treatment of filled milk adopted in the Assistant Secretary's decision for all Federal orders issued October 13, 1969 (34 FR 16881). Official notice was taken of the 1969 decision at the hearing held June 23–July 2, 1980, for this market. The record evidence indicates that the findings and conclusions of the 1969 decision are equally applicable under current marketing conditions in the proposed marketing area.

Cooperative association. A definition of "cooperative association" should be adopted as suggested by the order proponent.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of, or marketing milk or milk products for its members.

Defining such an organization of producers will facilitate the formulation of the various other order provisions as they apply to such an association of producers.

(b) *Classification of milk.*

The statutory authority for Federal milk orders specifies that an order shall classify milk in accordance with the form in which or the purpose for which the milk is used. As proposed by

proponent, the order should provide for three classes of utilization.

The products included in Class I milk and sold in the proposed marketing area for fluid consumption are required to be produced in compliance with the inspection requirements of a duly constituted regulatory agency. This is in contrast to the absence of such requirements for manufactured dairy products such as butter and hard cheese. Because of the extra cost of getting high-quality milk produced and delivered to the market in the condition and quantities required, it is necessary to establish a separate class for such milk to which a price above the manufactured milk price may be applied. The higher price for Class I milk must be at a level which, together with the prices applicable to other classes, will yield a "uniform" price that will encourage production of milk to meet the fluid requirements of the market.

Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

As provided, skim milk or butterfat disposed of as filled milk in fluid form shall be classified as Class I milk. This classification is identical to the treatment of filled milk in all Federal order markets. The basis for the uniform treatment of filled milk under this and all other Federal orders is set forth in the earlier findings concerning the definition of filled milk

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) and evaporated or condensed skim milk (plain or sweetened) in consumer-type packages. Class III milk also should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products, but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream products," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk should also include bulk fluid milk products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it should include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and certain other products as specified in the order.

The classification scheme adopted herein was proposed by the order proponent and is identical to the uniform classification plan contained in many of the other Federal order markets. The plan was based on exhaustive hearings held on this issue in 1971 for 39 markets. The final decision on the uniform classification plan was issued February 19, 1974 (39 FR 9012). Official notice was taken of this decision at the hearing held June 23–July 2, 1980, for the Alabama-West Florida market. It contains a detailed discussion of the classification issue. Official notice also was taken of the Assistant Secretary's decision issued July 17, 1975 (40 FR 30119), which modified certain provisions originally adopted in the 39-market decision.

Proponent testified that this classification system (as modified in 1975) would be fully appropriate for the proposed order. Adoption of the uniform classification plan in this new order will coordinate these essential provisions with the same provisions under most other orders.

The record evidence indicates that the findings and conclusions of the above mentioned decisions are equally applicable under current marketing conditions in the proposed marketing area.

Classification of shrinkage. The Alabama-West Florida order should contain provisions for classifying skim milk and butter fat in shrinkage. The shrinkage provisions adopted herein are similar to the shrinkage provisions now provided in most orders.

Total plant shrinkage should be prorated between (1) those kinds of receipts on which the Class III shrinkage limitations apply, and (2) other receipts, principally other source milk in the form of fluid milk products requested for Class II or Class III use. To the extent that the quantity of shrinkage prorated to the first category exceeds the established Class III limit, the excess should be classified in Class I.

The shrinkage provisions provided herein recognize that shrinkage normally varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to milk picked up at producers' farms and delivered to a plant, a Class III shrinkage allowance of 0.5 percent for such milk is provided.

A Class III shrinkage allowance of 1.5 percent to cover milk lost in processing is provided for the pool plant operator. This provides a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The total shrinkage allowance applicable to a pool plant operator depends upon whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if the milk is purchased on the basis of weights determined at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for a cooperative association handler who may have delivered the milk from the farm to the pool plant.

As provided herein, when bulk milk is transferred to another plant, the shrinkage allowance to the transferor handler would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to a nonpool plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This same procedure would apply to cooperative bulk tank deliveries to pool plants when similar handling is involved.

This division of the 2 percent shrinkage allowance, both in the case of deliveries from cooperative bulk tank handlers to plants and for transfers between plants, has been found practical and has been well accepted in Federal order markets where it now applies.

Shrinkage should be accounted for on an individual plant basis in the case of a handler operating more than one pool plant under the order. This procedure will promote plant efficiency in the Alabama-West Florida market.

Classification of milk transferred or diverted to other plants. Some fluid milk products or fluid cream products may be disposed of by regulated handlers to other plants. It is necessary, therefore, to provide specific rules so that the classification of such movements may be determined under this order.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk from a pool plant to another plant be classified in a manner similar to that used in classifying transfers of bulk fluid milk products.

Some skim milk or butterfat may be transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant. Such transfers should be classified as Class I milk unless both handlers request the same classification in another class in their monthly reports to the market administrator and sufficient Class II or Class III utilization is available at the transferee-plant after the allocation of its receipts of other source milk. If the shipping plant received other source milk in the form of nonfat dry milk, for example, during the month, the skim milk and butterfat so transfered should be classified so as to allocate the least possible Class I utilization to the other source milk. If the shipping handler received other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee-plant.

Transfers from a cooperative bulk tank handler to the pool plant of another handler should be assigned classification pro rata with producer milk received at the plant.

The provisions governing transfers between pool plants described herein will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utilization (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Skim milk or butterfat may be transferred or diverted from a pool plant or an other order plant in the form of a fluid milk product or transferred from a pool plant to an other order plant in the form of a bulk fluid cream product. The classification of such transfers or diversions shall apply only to the skim milk and butterfat in excess of any receipts at the pool plant from the other order plant.

The order should provide for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufaturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the Alabama-West Florida market.

Fluid milk products transferred or diverted to other order plants and bulk fluid cream products transferred to such plants will be classified in accordance with the classes to which such milk is allocated under the other order. If information concerning the classification of transfers and diversions is not available to the market administrator in time to compute handler pool obligations, such transfers shall be classified in Class I, subject to adjustments when the information is available. In addition, the order should provide that if the other order provides for a different number of classes than the Alabama-West Florida order, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified in Class I and skim milk and butterfat allocated to to other classes shall be classified as Class III milk. The order also provides that if a fluid milk product is transferred to an other order plant and such product is not defined as a fluid milk product under the other order, classification of such transfer shall be in accordance with the classification provisions of this order.

The order should prescribe a method for classifying the skim milk and butterfat in transfers from a pool plant to a producer-handler or in transfers or diversions from a pool plant to a governmental agency plant. If such skim milk and butterfat are in the form of a fluid milk product, such transfers should be classified as Class I milk. As described elsewhere in this decision, such a classification is necessary to assure that producers are not burdened with maintaining reserve supplies associated with the Class I sales of such operations.

Skim milk and butterfat in the form of bulk fluid cream products transferred from a pool plant to a producer-handler or a governmental agency plant should be assigned to the extent possible to the receiving plant's Class III use, and then to Class II use. If the producer-handler

or governmental agency plant does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

The order also must prescribe a procedure for classifying transfers or diversions to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant. Bulk fluid milk products transferred or diverted and bulk fluid cream products transferred should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes available to the market administrator books and records for the purpose of verifying the receipts and utilization of milk and milk products at the nonpool plant. To determine such lower classification, the nonpool plant's utilization must be assigned to its receipts of milk from various sources.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the Alabama-West Florida marketing area, and any transfers of packaged fluid milk products from the nonpool plant to Alabama-West Florida pool plants, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under the Alabama-West Florida order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned. Such use would be assigned first to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under the Alabama-West Florida order and second to any such remaining receipts from plants fully regulated under other orders.

Any remaining unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer and diversion provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

Allocation of receipts to utilization. Because the value of producer milk is based on its classification, the Alabama-West Florida order must provide a procedure for assigning a handler's receipts from different sources to the handler's utilization for the purpose of establishing such classification.

The order proponent testified that the system of allocating handlers' receipts to the various classes should be the same as that adopted in the Assistant Secretary's decision dealing with the classification, allocation and pricing of other source milk issued July 7, 1964 (29 FR 9110), commonly known as the "compensatory payment" decision.

The "compensatory payment" decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. The decision established a procedure for allocating over a pool plant's total utilization the receipts at the plant from all nonpool sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Proponent's representative testified that the method developed for all Federal milk marketing orders as discussed in the 1964 decision is appropriate in the proposed marketing area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants that is used for coordinating the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area.

The order also provides that handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products be permitted to have such other source milk allocated directly to their Class II uses. Under the classification plan provided herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

Handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers

also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in Class II products.

Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation of a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle receipts of fluid other source milk with receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating the actual use of fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk to Class III.

It should be noted that the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classificaton. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. this would be the case even if a Class II classification were requested by the handler.

The attached order provides that, in the case of a multiple-plant handler, each of the handler's pool plants shall be considered separately for purposes of allocating receipts to utilization. In accordance with the "compensatory payment" decision referred to earlier, however, certain receipts of milk from unregulated supply plants and other Federal order plants are to share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of the handler's pool plants combined. The order, therefore, provides a procedure whereby the milk from unregulated supply plants and other order plants is classified on the basis of the handler's total system, but is assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of a handler's entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of such handler's other pool plants in the system. This technique, however, does not change the amount of milk to be accounted for at each plant or the classification of milk within the handler's entire system.

The new order should *not* provide that in an emergency the market administrator may waive certain allocation and pricing provisions that give preference to milk from regulated sources. Such a provision was proposed by five proprietary operators of plants that would be pool distributing plants.

A representative for Borden, Inc., which operates a plant at Pensacola, Florida, testified in support of the proposal. He related the need for such a provision to the procurement problems faced by the Pensacola plant. The plant receives about 75 percent of its milk supply from independent producers. The remainder comes from a cooperative.

The witness stated that the Pensacola plant at times is unable to obtain adequate supplies of milk from local sources. He testified that in the fall months, when milk production falls short of Class I needs, cooperatives normally allocate their supplies first to those plants that receive their total supplies from cooperatives. According to the witness, plants that receive only supplemental supplies from cooperatives may have a problem obtaining additional milk under such circumstances.

The handlers' spokesman contended that absent the proposed emergency provisions, the operators of such plants have only two alternatives. One would be to buy 100 percent of their milk from independent producers, thus eliminating any reliance on supplemental supplies from cooperatives. A second option would be to buy all the plant's needs from a cooperative association. He expressed a view that it was not the intent of the order to cause either to happen.

At times the Pensacola plant has had to reach out and bring in "spot" loads of milk from as far away as the Carolinas, Pennsylvania, and Wisconsin. Unless brought in as "producer milk" under a Federal order, or obtained from a plant that is a pool plant under another Federal order, such milk is "other source milk" and is assigned to the lowest priced classification under the local order. If any such other source milk is assigned to Class I, an additional charge or compensatory payment is required. It is this provision that the handlers propose be waived if the market administrator verifies that an "emergency" exists. "Emergency" was defined by proponents' witness simply as a situation where milk is not physically available in the market.

This proposal was opposed at the hearing by a spokesman for Dairymen, Inc. He stated the association's belief that such a provision would undermine the operation of the Federal order. Moreover, the cooperative maintained that adoption of such a provision would tend to lower prices to producers at a time when milk was most needed. According to the witness this would

depress local milk production, which is the most economic source of supply for the area.

Counsel for AMP noted that the handlers' proposal was contradictory to AMP's proposal and stated the association's opposition to the proposal. However, AMP's brief of proposed findings and conclusions urged that the proposal be denied on the basis that the type of emergency referred to could be arranged through certain purchasing practices. The association's brief takes the view that adoption of the proposal would leave "a wide opening for substantial abuse of the Federal milk order system and in particular this proposed Alabama-West Florida order."

The proposal should not be adopted on the basis of the record obtained in this proceeding. A key element of the proposal is that the market administrator would need to verify that an emergency situation existed. Proponents' witness maintained that the market administrator could establish through a single telephone call whether any cooperative association milk is available for delivery to a handler's plant. This may be possible where cooperatives have joint arrangements to supply milk in the most efficient manner, as was the case in this market at the time of the hearing. However, there is no basis to conclude that such arrangements are permanently fixed or that other cooperative associations not involved in the arrangements will not be supplying milk to the market in the future.

The record shows, moreover, that cooperatives may negotitate prices for milk that would exceed the minimum prices established by an order. It is possible that a cooperative may demand a price higher than a handler prefers to pay. If milk is not made available to the handler at a lower price, the handler could claim that it cannot obtain milk and might contend that an "emergency" supply situation exists. In such a case, the market administrator would be unable to verify an "emergency" shortage of milk. Furthermore, any attempt to do so would inject the market administrator into the price negotiations, which goes beyond the duties and responsibilities involved in administering an order.

Another problem lies in proponents' intent that the type of relief sought should be available on a handler-by-handler (plant-by-plant) basis, i.e., the market administrator's decision on waiver thus would not be based on the total market supply and demand situation but rather on the supply problems of an individual handler. Thus, the waiver of certain allocation and pricing provisions could be granted to one handler, but not to others who received other source milk, but for some reason other than the type of emergency envisioned by the proponents. This latter point raises a basic question of handler equity because the proposed provisions for waiver would not be applicable on a marketwide basis.

It is noted that proponents' witness stated that the proposal should not provide a means for circumventing the classification, allocation, and pricing provisions of the order. The allocation provisions adopted for the Alabama-West Florida order are based on uniform provisions already incorporated into all orders. Absent compelling evidence to justify departing from such uniform provisions, the new order should include the allocation provisions as proposed by the order proponent. The record in this proceeding does not provide a basis for concluding that the waiver proposal can be adopted without at the same time tending to undermine the classification and pricing provisions of the Act. For the foregoing reasons, the proposal is denied.

Classification of end-of-month inventory. The order should provide for the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Ending inventory of fluid cream products, eggnog, and yogurt, when held in bulk form, likewise should be classified in Class III. Such products held in packaged form at the end of the month should be classified as Class II milk.

Inventories classified in Class III should be subject in the following month to reclassification in a higher class, as determined through the allocation of receipts to utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory.

Because of the regulatory treatment being accorded certain other source milk, it is necessary that fluid cream products, yogurt and eggnog on hand in packaged form at the end of the month be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the next month, would be allocated in such month directly to the handler's Class II utilization.

For the first month the order is in effect, a slightly different classification of inventory must apply. Beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new order, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply in the following month if a higher classification results.

(c) *Pricing of milk.* In order to promote and maintain orderly marketing conditions for the Alabama-West Florida market, minimum class prices for producers should be established at levels that reflect economic conditions affecting the market supply and demand for milk. Such prices should result in returns to producers that will encourage a supply of milk sufficient to meet the fluid needs of the market, plus a reserve to provide for daily and seasonal fluctuations in demand.

The Class I price must not be so high as to attract unneeded supplies to the market. On the other hand, the price should be high enough to encourage the production of an adequate quantity of high-quality milk required for the fluctuating daily and seasonal fluid needs of the market.

The Class II price should be high enough above the manufacturing milk price to compensate producers for at least a part of the cost of delivering Grade A milk to regulated handlers for cream products, cottage cheese, ice cream, and related items for which handlers want Grade A milk.

The Class III price must be fixed at a level that will insure that milk produced in excess of the Class I requirements of the market can be processed into Class III products and disposed of in competition with similar products from unregulated manufacturing plants.

The class prices and uniform producer prices for milk should be announced on a per hundredweight basis. Because the order would not establish different values for butterfat in each class, the class prices would not be announced for a particular butterfat content of milk.

Uniform prices to producers, however, would be announced on a 3.5 percent butterfat basis, and handlers would be required to pay producers for their milk at the uniform price adjusted by a butterfat differential to reflect any variation from 3.5 percent in the butterfat content of their milk. These provisions are consistent with such provisions widely applicable throughout the Federal order system.

Class I price and in-area location adjustments. For an 18-month period beginning with the effective date of the order's pricing provisions, the Class I price for the Alabama-West Florida market should be computed by adding a Class I differential of $2.30 to the "basic formula price" for the second preceding month. The Class I price applicable at specific locations within the marketing area should be determined by adjusting the announced Class I price by the location adjustment established for the zone in which a plant is located. The in-area zones and applicable location adjustments are defined as follows:

Zone 1—Minus 20 cents ($2.10)
Alabama Counties: Lauderdale, Limestone, Madison, Jackson, Colbert, Franklin, Lawrence, Morgan, Marshall, DeKalb and Cherokee.

Zone 2—No Adjustment ($2.30)
Alabama Counties: Marion, Winston, Cullman, Lamar, Fayette, Walker, Pickens, Tuscaloosa, Jefferson, Blount, St. Clair, Etowah, Calhoun, Cleburne, Shelby, Talladega, Clay, Randolph, Bibb, Chilton, Coosa, Tallapoosa and Chambers.

Zone 3—Plus 15 cents ($2.45)
Alabama Counties: Sumter, Greene, Hale, Perry, Dallas, Autagua, Elmore, Macon, Lee, Russell, Choctaw, Marengo, Wilcox, Lowndes, Montgomery, Bullock, Washington, Clarke, Monroe, Conecuh, Butler, Crenshaw, Pike and Barbour.

Zone 4—Plus 37 cents ($2.67)
Alabama Counties: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, and Henry.
Florida Counties: Escambia, Santa Rosa, Okaloosa and Walton.

Zone 4a—Plus 20 cents ($2.50)
Alabama County: Houston.

The basic formula price should be the average pay price for manufacturing grade milk at plants in the States of Minnesota and Wisconsin. The price for milk used for fluid purposes in the market has a direct relationship to the prices paid for milk used for manufacturing purposes. The Minnesota-Wisconsin price, or "M–W" price, used in determining the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. It is used as the basic formula price in all Federal order markets and is equally appropriate for use in the Alabama-West Florida order. The differential over manufacturing milk prices is necessary to reflect the added cost of meeting quality requirements in the production of milk for fluid use and the cost of moving it to market.

Proponent of the order proposed that the Minnesota-Wisconsin manufacturing milk price be the basic formula price each month. This price is an average of prices paid at a large number of manufacturing plants in the two States. Plant operators report the total pounds of manufacturing grade milk received from dairy farmers, the total butterfat content, and the total dollars paid to dairy farmers for such milk f.o.b. the plant. These prices are reported on a current basis. The "M–W" price is announced by the Department for each month on or before the 5th day of the following month.

AMP proposed the Class I differential and the in-area zone location adjustments adopted herein. AMP proposed that its "Central zone (North)" (Zone 2 as adopted herein), which includes the Birmingham area, be the base zone for which no location adjustment would apply. The proposed in-area zone pricing system would have plus adjustments south of Zone 2 and a minus adjustment to the north.

The cooperative's spokesman testified that the proposed Class I price structure for the market would provide reasonable price alignment with nearby orders. He indicated that the proposed prices would be comparable to the prices now being paid by handlers in the market and should not result in higher consumer prices for milk.

DI presented testimony on hauling costs and the boundaries of the pricing zones, but did not present a formal proposal on the Class I price structure for the market. Meadow Gold testified on zone boundaries. No other parties presented evidence on the Class I price structure or opposed the AMP proposal.

A zoned Class I price structure is appropriate for the Alabama-West Florida marketing area because of the geographic relationship between supply and demand in the market. The record indicates that of the producers associated with the proposed market, 36 percent are located in Tennessee, 12 percent in Mississippi, 12 percent in Zone 1, 17 percent in Zone 2, 14 percent in Zone 3, 9 percent in Zone 4 (including 4a), and less than 1 percent in Kentucky. The marketing area has four population centers on a north-south axis—Huntsville, Birmingham, Montgomery, and Mobile-Pensacola. The 1978 population of the marketing area was distributed as follows: Zone 1, 16 percent; Zone 2, 38 percent; Zone 3, 18 percent; Zone 4 (including 4a), 27 percent. These statistics illustrate the geographic disparity between the location of milk supplies and the centers of demand. The Federal order price structure should be designed to attract an adequte supply of fluid milk to each of the population centers and a zoned prize structure is an appropriate mechanism to accomplish this objective in the Alabama-West Florida market.

Class I prices in the Alabama-West Florida market should be aligned reasonably well with the pricing structure throughout the Federal order system. Class I prices applicable in most markets east of the Rocky Mountains generally are based on the Chicago Regional Federal order Class I price applicable at Eau Claire, Wisconsin, adjusted for transportation cost from that location to the local market at 1.5 cents per hundredweight per ten miles. This pricing structure has been adopted because the Minnesota-Wisconsin region is an area of surplus production that can serve as a source of reserve supplies for most markets. However, the Class I prices in some markets deviate from this formula because of local market conditions.

Class I prices in this market also should be aligned with the existing prices in surrounding Federal order markets. Alignment should be as close as possible to prevent serious marketing disruptions as a result of implementing a Federal order in the area. Price alignment with nearby markets should prevent handlers in Alabama and West Florida from being placed in an unfavorable competitive position or being given a competitive advantage over handlers regulated by other Federal orders in the region.

Close alignment of the price structure in this market with prices in the surrounding markets and the overall Federal order pricing structure, however, is not possible because of the pricing arrangements in the surrounding markets. To the north, the Class I price for the Nashville order is slightly lower than the Eau Claire, Wisconsin, Class I price plus transportation (at the 1.5-cent rate) to Nashville. Therefore, Alabama prices based on the Eau Claire price plus transportation would be somewhat high relative to the Nashville order price. The Alabama-West Florida market is bounded on the west by the New Orleans-Mississippi market, where prices increase from north to south under a zone pricing structure. To the east is the Georgia market, which has a large area subject to the same Class I price. For reasons stated earlier in this

decision, a zone price structure with prices increasing from north to south is appropriate for this market. Alignment of zone prices with the New Orleans-Mississippi market is not difficult to achieve. The eastward extension of the existing Mississippi zone lines generally meets this objective, except for alignment with a group of 12 unregulated counties in northeastern Mississippi. However, a close alignment of the new order's price zones with the pricing in the Georgia market is not possible because the southern two-thirds of the Georgia marketing area (which covers most of the State) has a Class I differential of $2.30. Therefore, any attempt to align prices in southern Alabama and West Florida with both the Georgia price and the New Orleans-Mississippi price will not be successful. Nevertheless, a pricing structure must be provided for the new order within the constraints imposed by the above conditions.

The price structure proposed by AMP is a reasonable approach to reconciling the problems of price alignment in this market. The Eau Claire price adjusted to Birmingham at the 1.5-cent rate would be approximately $2.42, while the Nashville price adjusted to Birmingham by the same rate would be $2.14. The AMP proposal for a $2.30 Class I differential for the base zone at Birmingham represents a compromise between the national pricing system and the adjusted Nashville price. Moreover, a $2.30 differential at Birmingham would provide good price coordination on an east-west basis with the existing Federal order Class I differentials of $2.30 at Atlanta, Georgia, and Columbus, Mississippi. Therefore, $2.30 is a reasonably appropriate Class I differential for the region surrounding Birmingham. It should be reasonably adequate as a minimum Federal order price, together with the zone pricing structure adopted herein, to attract sufficient supplies of milk for the market.

The Class I price adopted for the order should be reviewed within 18 months of the date the order becomes fully effective. By such time, data relative to milk supplies and sales in the market will have been accumulated. This will allow for a careful re-examination of the appropriate Class I price level for this market at a public hearing.

The zone delineations proposed by AMP are only slightly different from the existing price zones as defined by the Alabama Dairy Commission (ADC). The AMP plan places each major metropolitan area in a separate zone and the location adjustments between zones generally reflect the 1.5-cent per ten mile rate. The AMP plan also places all distributing plants located in Alabama in the same zone as under the ADC regulation, except for a plant in Dothan, Alabama.

DI proposed that the AMP zone plan be amended by (1) moving six Northwest Alabama counties (Marion, Winston, Cullman, Lamar, Fayette, and Walker) from Zone 2 to Zone 1; (2) moving Cherokee County, Alabama from Zone 1 to Zone 2; and (3) moving seven East Central Alabama counties (Bibb, Chilton, Coosa, Clay, Randolph, Tallapoosa, and Chambers) from Zone 2 to Zone 3. Adoption of this proposal would affect only one plant, the DI Flav-O-Rich distributing plant at Fayette. This plant would shift from Zone 2 to Zone 1, lowering the Class I differential for the plant from $2.30 to $2.10. The proposal was based on an analysis of retail sales patterns revealed in a sales survey which, according to DI, showed that the DI plan more accurately reflected the competition among handlers in the marketing area than the AMP proposal.

Meadow Gold, a fluid milk distributor, asked that Lee County, Alabama, be placed in Zone 2 rather than Zone 3 as proposed by AMP. This proposal would lower the Class I differential applicable at Meadow Gold's Opelika plant from $2.45 to $2.30. The Meadow Gold proposal was based on an analysis of data on sales patterns which purported to show that placing Lee County in Zone 2 would more accurately describe the market in which the Opelika plant competes for fluid milk sales.

The DI and Meadow Gold proposals reflect the premise that pricing zones should represent the geographic region in which handlers compete for fluid sales. However, competition among handlers cannot be the sole criterion for drawing zone lines because the primary function of the Class I differential in Federal orders is to attract an adequate supply of milk for the fluid market.

The record indicates that in 1979 less than one-half of the milk needed for the fluid market in Alabama came from Alabama producers on an annual basis. Therefore, it is reasonable to conclude that handlers in the Alabama-West Florida market vigorously compete among themselves and with handlers in other markets for supplies of raw milk produced both within and outside of Alabama. In this circumstance, Class I prices at various plant locations must reflect the economic value that milk has to handlers at those locations.

Under the Class I price structure adopted herein for the market Class I prices would increase from north to south. This gradation of prices would reflect the additional value that milk has at the various plant locations relative to the value of milk in the more northern areas, such as in Tennessee where milk supplies are much more plentiful than in Alabama. Handlers in Alabama generally rely on local milk supplies to the extent possible. It is necessary, though, to procure milk from the heavier production areas in Tennessee. Producers in the Tennessee areas cannot be expected, however, to make their milk available to handlers in the deficit production areas in Alabama unless there is a sufficient price incentive. This is related largely to the cost of moving milk.

The Class I prices that would apply at various plants throughout the marketing area thus would represent the value of an economic service to handlers by distant producers who bear the cost of moving their milk to the handlers' plants. This is the case even where a handler draws his entire supply from producers located near his plant. In the absence of any local supply, the handler would have to procure milk from other areas. Thus, the value of milk at that location necessarily must reflect the cost of obtaining milk from reserve supply sources. Also, the economic value of the local milk supply at a given plant location is related to the local producers' opportunity to ship milk to other plants where the price is higher. If the local price is too low relative to this "opportunity" price at other locations, the local supply will be attracted to other areas.

The DI proposal to place the Flav-O-Rich plant at Fayette in Zone 1 is denied. The $2.10 Class I differential that would result from adoption of the proposal would not reflect the general economic value that milk delivered to the Fayette location has. Distributing plants that are relatively close to the Fayette plant are located at Birmingham, Alabama, and Columbus, Mississippi. The Class I price differential at Birmingham, even under the DI proposal, would be $2.30. Similarly, the Class I differential at the Columbus plant, which is regulated under the New Orleans-Mississippi order, is $2.30. Since all three locations lie generally on an east-west line, it is reasonable to establish a Class I differential of $2.30 at the Fayette location. A lower price at Fayette could jeopardize the attraction of adequate supplies at that location over the long run.

The Meadow Gold proposal to move Lee County, Alabama, from Zone 3 to Zone 2 also is denied. The record indicates that the Opelika plant obtains much of its milk supply from Alabama producers. It is presumed, then, that the Opelika plant is competing for local milk supplies with handlers located at Montgomery, Alabama, where a Class I differential of $2.45 would apply under the proposed order. It is recognized that a $2.30 differential applies under the Georgia order at a nearby distributing plant at Columbus, Georgia. However, over the long run, $2.30 differential at Opelika could place the plant at a disadvantage in competing for raw milk supplies in its principal procurement area in Alabama.

The AMP proposal to create a special pricing provision for a plant at Dothan, Alabama, is adopted. The order should designate a separate Zone 4a that would be limited to Houston County, Alabama, where Dothan is located. This zone should have a plus 20-cent location adjustment rather than the plus 37 cents applicable in Zone 4. Although the proposals by DI and Meadow Gold also were in part premised on competition from unregulated or other order handlers, the 37-cent difference between Dothan and nearby Georgia handlers is substantially greater than the 15-cent difference between Opelika and Georgia handlers or the 20-cent difference between Fayette and the plant at Tupelo, Mississippi, which has been regulated under the Memphis order since July 1980.[4] Prior to July 1980, the plant at Tupelo was an unregulated plant. The special provision included for Houston County reduces the difference between the Georgia Class I differential and the Alabama-West Florida Class I differential applicable at Dothan to 20 cents, which is similar to the position of other Alabama-West Florida handlers who compete with other order handlers.

Exceptions were received concerning three elements of the in-area Class I price structure. DI excepted to the $2.30 Class I differential applicable at Fayette, Alabama. Meadow Gold challenged the denial of their proposal to place Lee County, Alabama in Zone 2. Southern Milk Sales, DI, and Meadow Gold objected to the decision to establish a Zone 4a with a $2.50 Class I differential for Houston County, Alabama. All three exceptions are denied.

In a market where a zoned price structure is appropriate to reconcile the geographic disparity between milk supplies and population centers, the boundaries of the price zones and the location adjustments applicable for each zone are usually based on such factors as (1) historic price relationships in the market; (2) the minimum price deemed necessary to secure an adequate supply of milk for fluid use; (3) price alignment between adjoining Federal orders; and (4) patterns of competition among handlers in the market. The weight to be attached to any one factor depends on the circumstances of a particular pricing issue, but in most cases the minimum price necessary to secure an adequate supply of milk for fluid use is of primary importance. All four factors were considered in determining the appropriate Class I price structure for the Alabama-West Florida market.

The pricing proposal made by AMP represented historic price relationships in the market because it placed each plant, except the plant at Dothan, Alabama, in the same relative pricing position as under the existing state regulations. Also, the witness for the proponent cooperative stated that the proposed price structure represented the minimum price necessary to attract adequate supplies of milk for fluid use to various locations in the market. In addition, the AMP proposal was designed to align the Alabama-West Florida price structure with prices in surrounding Federal order markets. However, alignment of the Alabama-West Florida price structure with the Georgia order is impossible without abandoning zone pricing in Alabama. Since the Department considers a zoned pricing structure appropriate for this market, price alignment with the Georgia market becomes a secondary priority.

As stated in the record and earlier in this decision, the DI and Meadow Gold proposals reflect the contention that the geographic region in which handlers compete for sales should be the predominant factor in drawing zone boundaries. By denying these proposals, the Department is not stating that handler competition should not be a factor, but that the evidence presented in support of the proposals is not so overwhelming that handler competition should outweigh other factors.

DI states in its exception that the record is clear that the bulk of the Fayette plant's sales are in competition with products of handlers that would be subject to a $2.10 Class I differential. While this is not disputed, the record also indicates that almost 70 percent of the Fayette plant's sales compete with products of plants that would be subject to a Class I differential higher than $2.30. Therefore, it cannot be concluded that the record shows that the Fayette plant would be placed at a serious competitive disadvantage by inclusion in Zone 2 rather than Zone 1.

Meadow Gold objected to the $2.45 Class I differential at Opelika stating that 87.9 percent of the Opelika plant's total Class I sales are in direct competition with milk priced at or below $2.30. However, if the Meadow Gold proposal were adopted, the sales survey indicates that 95 percent of the Opelika plant's *Alabama* sales would compete with products of plants subject to a higher price. As with Fayette, the record evidence is mixed on this issue.

For both the Fayette and Opelika plants, evidence exists to support either of the proposed price levels for each plant. Therefore, competition among handlers could be used as a basis to support either price. As a result, factors other than competition must be considered in determining the appropriate minimum order price. As stated elsewhere in this decision, the AMP proposal for a $2.30 differential at Fayette and $2.45 at Opelika preserves historic price relationships. The $2.30 differential at Fayette is further supported by the need to align prices with neighboring Federal orders. DI and Meadow Gold objected to the Department's conclusion that higher differentials were needed in Fayette and Opelika, respectively, in order to secure supplies of milk for fluid use. The record shows, however, that more than half of the milk supply for Alabama is produced outside the State. Also, there is evidence that the Opelika plant receives most of its supply from Alabama producers. Under these circumstances, it is realistic to conclude that there is substantial competition for local milk supplies. Since this is a new order, the ramifications of this competition for milk supplies are somewhat unknown. However, because securing a supply of milk adequate for fluid needs is a primary function of the Class I price structure, it was initially determined that at this time a $2.30 differential at Fayette and a $2.45 differential at Opelika would be appropriate. These findings are reaffirmed. Therefore, for all of the above reasons the exceptions concerning the Class I differential at Fayette and Opelika are denied. Interested parties should note that the Class I price structure can be reviewed after operational experience has been gained under the order.

Determining the appropriate Class I differential for southeastern Alabama is difficult because of the extreme

[4] Official Notice is taken of the Announcement of Uniform Prices for the months of July 1980 through May 1981, Memphis, Tennessee, Marketing Area, issued by the Market Administrator, P.O. Box 4225, Little Rock, Arkansas 72214.

variation in Class I differentials in surrounding Federal orders—$2.30 in Georgia and $2.85 in Upper Florida. The AMP proposal for a $2.50 Class I differential for Dothan was designed to address what AMP perceived to be the competitive realities of the region. Both the hearing transcript and the briefs filed indicated no opposition to this proposal from any individual or group. No one offered an alternative proposal or even suggested that the $2.50 differential was not appropriate. It was determined that AMP had presented a reasonable basis for the special provision based on the 37-cent difference in Class I prices between the Dothan plant and Georgia handlers. There being no information on the record other than that presented by AMP, the special pricing provision for Houston County, Alabama, is adopted. The opposition of interested parties through their exceptions does not give the Department anything on the record on which a different decision could be based. Therefore, the exceptions are denied.

Out-of-area location adjustments. The Class I price at plant locations outside the marketing area should be the Class I price for Zone 2 plus or minus the following location adjustments:

(1) For a plant located in the Tennessee or Georgia counties included in the Tennessee Valley marketing area or Bledsoe County, Tennessee, the adjustment should be minus 20 cents ($2.10 Class I differential);

(2) For a plant located in the Nashville marketing area or Franklin, Grundy, Lincoln, Moore or Van Buren Counties in Tennessee, the adjustment should be minus 45 cents ($1.85 Class I differential);

(3) For a plant located outside the marketing area and north of a line extending through the northern boundaries of Georgia, Alabama and Mississippi and not located in the areas covered by paragarphs (1) and (2) above, the adjustment should be minus 20 cents and minus an additional 1.5 cents for every 10 miles of fraction thereof that such plant is from the nearer of the City Hall in Florence or Huntsville, Alabama;

(4) For a plant located outside the marketing area and south of the line through the northern boundaries of Georgia, Alabama, and Mississippi, and not in the State of Florida or the Georgia counties listed in paragraph (1) above, the adjustment should be the adjustment applicable at Mobile, York, Tuscaloosa, Florence, Huntsville, Gadsden, Opelika, or Dothan, Alabama, whichever is nearest; and

(5) For a plant located outside the marketing area and in the State of Florida, the adjustment should be plus 55 cents ($2.85 Class I differential).

AMP was the only party that proposed out-of-area location adjustments. AMP's objective in drafting the out-of-area location adjustment proposal was to align the Alabama-West Florida prices with the minimum prices in surrounding Federal orders so that the implementation of a Federal order in Alabama would not disrupt established marketing arrangements. The adjustments adopted by this decision follow closely the AMP proposal. However, the adjustments adopted for the Nashville and Tennessee Valley marketing areas are different.

The Nashville marketing area and the unregulated counties in South Central Tennessee outside the Tennessee Valley order are major sources of fluid milk for the proposed marketing area. For this reason, the Class I price applicable at plants in the Nashville marketing area and five unregulated counties must be low enough to reflect the cost of moving milk south into Alabama. The AMP proposal would have established a Class I differential of $2.10 for much of this area, including DI's plant at Lewisburg, Tennessee. However, this price would not recognize the cost of transporting milk into Alabama and would not encourage the movement of milk from a supply or balancing plant to distributing plants in the marketing area. For this reason, the location adjustment for this area should provide a Class I differential of $1.85, which is 25 cents lover than the adopted differential at Huntsville, Alabama. This 25-cent difference should provide an incentive for producers in South Central Tennessee either to deliver their milk to plants located in Tennessee but pooled on the Alabama-West Florida market and save hauling costs to Nashville or to ship directly to plants in the proposed marketing area and receive the higher price. The $1.85 Class I differential is identical to the Nashville Class I differential which provides for a uniform value of fluid milk in South Central Tennessee.

The decision calls for a minus 1.5-cent per ten miles adjustment for plants located north of the marketing area and not covered by any other location adjustment provision. This would align the Alabama-West Forida Class I price with the lower Class I prices under other Federal orders to the north that are nearer to the Nation's reserve supply area.

Location adjustment credits. In conjunction with its pricing proposal, AMP proposed that a pool plant transferring fluid milk products in bulk form for Class I use to a pool distributing plant at which a higher Class I price applies be accountable for such products at the higher price applicable at the transferee-plant. Under the proposal, however, transferor-plants would receive a location adjustment credit against the higher price equal to the difference between the Class I differentials applicable at the two plants. This was intended to encourage the movement of milk to market centers for Class I use.

When the operator of a supply plant located in an outlying area ships milk to a distributing plant where a higher Class I price is applicable, the supply plant operator cannot pay both the higher price and the transportation costs for hauling the milk to the distributing plant. Thus, a lower Class I price is needed at the supply plant location to reflect the cost of moving the milk to the distributing plant. Such price reductions, however, reduce the total value of the pool. In addition, if supply plant milk replaces local milk going to a distributing plant for Class I use, this further reduces the total pool value. Thus, shipments from outlying supply plants to distributing plants should be made only when such shipments are necessary to meet the fluid milk needs of distributing plants.

Therefore, the limitations on location adjustment credits proposed by AMP are adopted. These provisions limit the amount of location adjustment credits to the transferee-plant's Class I sales that remain after subtracting receipts of milk from producers, cooperative bulk tank handlers, and packaged fluid milk products from other pool plants. Unnecessary transfers are further discouraged by the provision which gives priority in receiving credits to transferor-plants located nearest the transferee-plant. The adopted location adjustment provisions complement the zone price structure as a means of encouraging the movement of bulk fluid milk products to centers of demand for Class I use. However, the provisions will not give price credits to cover unnecessary hauling of milk between pool plants for other than Class I use.

Class III price. The Class III price should be the basic formula price for the month, as proposed by the order proponent.

Reserve milk disposed of in manufactured product uses should be priced at a level that will result in the orderly disposition of all excess supplies. Establishment of a price too high to clear the market of milk excess

to fluid requirements would interfere with the orderly marketing of milk for both processors and producers. Fixing a price too low would encourage handlers to associate additional supplies with the market simply to obtain low-cost milk for manufacturing uses.

The Minnesota-Wisconsin price is the best available indicator of the value of milk used in butter, nonfat dry milk, and cheese, which are usually the last-resort uses for surplus milk. The M–W price is an average of the prices being paid by processors of these products who are meeting the competitive test of the unregulated marketplace. Use of the M–W pay price series for the Alabama-West Florida market will provide consistency between this order and other Federal order markets which also use the M–W price series as the basic formula price for pricing Class III milk. In addition, it achieves parity between regulated and unregulated plants since it provides the regulated manufacturer with essentially the same margin for processing as is experienced in the unregulated market.

Class II price. The price for Class II milk should be the basic formula price for the month, plus 10 cents. This price level, which was proposed by the order proponent, will obtain for producers some extra return for producer milk used in Class II products above its value in other manufactured dairy products.

Producers should be compensated for making high-quality milk available to handlers on a steady basis for use in Class II products. Experience in Federal orders throughout the country has shown that milk used in Class II can be priced somewhat higher than the Minnesota-Wisconsin price without impairing the market for producer milk. A 10-cent differential, as proposed, together with the Class I differential, will help to insure producers of a uniform price which will compensate them for the production of a steady supply of high-quality milk.

The order should not provide for advance Class II milk pricing as proposed by handlers. Under that proposal, the Class II price each month would be based on the Minnesota-Wisconsin price for the second preceding month. The proposal was supported on the basis that handlers are disadvantaged if they do not know the raw product cost before they price and sell finished Class II milk products. The handler witness who testified on the proposal urged that it be adopted on the basis of evidence presented at the hearing.

At the hearing, the order proponent's spokesman stated a concern that the Class II price provisions of a new order for the Alabama-West Florida area should be the same as in surrounding markets to the east, north, and west. These orders are among a group of 29 orders that were involved in litigation concerning a denial of advance Class II pricing at the time uniform classification provisions were adopted for these orders in 1974. At the time that the hearing was being held on the Alabama-West Florida order, handlers in other areas were being invited to submit proposals for consideration at a contemplated hearing related to the pricing of Class II milk in the 29 orders. Thus, there was an expectation in the industry that a hearing would be held to consider the advance Class II pricing issue for this group of markets.

The proponent cooperative's spokesman at the hearing on this new order expressed a desire that the findings from any such hearing for the 29 markets be applied to the consideration of Class II pricing for the proposed Alabama-West Florida order.

Dairymen, Inc., also indicated support for the concept of advance Class II pricing, but opposed adoption of the handler proposal. The Association did not want a Class II pricing formula for the new order that would differ from what might result from any hearing on this issue for the 29 markets. DI held the view, reiterated in its brief, that it would be better to have an additional hearing on that issue in this market after a decision had been issued for the 29 markets.

In its brief, AMP also stated support for advanced Class II pricing in principle, but urged adoption of its proposed Class II price provisions rather than the handler's proposal.

Advance Class II pricing should not be adopted on the basis of the record in this proceeding. The record indicates that the parties in this proceeding agree in principle that the Class II price should be announced prior to the month to which the price applies. Moreover, there also is evident a strong desire for alignment of provisions with surrounding orders. However, it is not possible to achieve both ends in this proceeding under the circumstances involved in the Class II pricing issue. It is noted that a hearing was held on proposals to change the announcement procedures for Class I and Class II prices in the 29 markets, but the proceeding was limited to those 29 orders.[5] Therefore, the Department cannot incorporate into this proceeding the evidence and findings that arise out of the 29-market proceeding. Moreover, the procedure adopted for the 29 markets for announcing Class II prices differs considerably from the procedure proposed by handlers for the new order. Accordingly, the Alabama-West Florida order should provide that the Class II price be determined as proposed by AMP. Any coordination of the Class II price provisions with other orders should be on the basis of another hearing.

Butterfat differential. The order should have a producer butterfat differential equal to .115 times the average wholesale price of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. This differential was proposed by AMP and is common to most other orders.

A butterfat differential reflects the incremental value of milk containing more or less butterfat than the standard announced level. Weighted average and uniform prices under the order will be announced for milk containing 3.5 percent butterfat. Milk containing less than 3.5 percent butterfat will be worth less than the 3.5 percent price, while milk testing above 3.5 percent will be worth more than the announced price. This adjustment will insure equitable payments reflecting such variations in butterfat content of milk delivered by iindividual producers.

The butterfat differential adopted herein is the same as provided in a decision to adopt uniform classification provisions in 39 markets (this decision has previously been noticed). Since the classification provisions of that decision are adopted herein, it is appropriate to provide also for the same butterfat differential. This is clearly in line with proponent cooperative's intent in this regard.

Use of equivalent prices. If for any reason a price or pricing constituent needed by the market administrator in administering the order is not available, the market administrator is authorized by the order to use an equivalent price or pricing constituent as determined by the Secretary. Including such provision in the order will leave no uncertainty with respect to the procedure to be followed in the absence of any data customarily used and thereby will prevent interruption in the operation of the order.

(d) *Distribution of proceeds to producers.* Marketwide pooling of producer returns should be provided in the order as the means of distributing among producers the proceeds from the sale of their milk. Such pooling method will assure each producer supplying the

[5] Official notice is taken of the Assistant Secretary's decision, Docket Numbers AO–10–A54, et al, issued July 8, 1981 (46 FR 36151).

market a proportionate share of the market's total Class I sales.

Record evidence indicates that 21 fluid milk bottling plants will most likely qualify for pooling under the new order. Most of these plants are primarily fluid milk operations with apparently high levels of Class I utilization. However, the record also indicates that three of these plants conduct significant by-product operations in conjunction with their fluid milk bottling operations. Because of this, the Class I utilization will vary somewhat from plant to plant and from month to month. For instance, the handler operating a distributing plant at Gadsden, Alabama, indicated that such plant's Class I utilization ranged from a low of about 70 percent to a high of 88 percent. Hence, while most of the plants in the market are primarily fluid bottling operations and handle little or no surplus milk, others utilize varying proportions of their supplies for manufacturing purposes. Under these conditions, a marketwide pool will facilitate the orderly marketing of producer milk by removing disruptive competition by producers for the high Class I use outlets. Under individual handler pooling, the type of operations conducted at a plant would be a determining factor in the price the plant could pay its producers compared to other plants.

A marketwide pool also will make it possible for producer associations and pool plant operators to divert any weekly or seasonal reserves of milk to nonpool plants and maintain continuous producer milk status for such dairy farmers if their milk is needed to fulfill the year-round requirements of the market. This pooling technique will assist further in apportioning among all producers the lower returns from reserve milk in excess of the market's fluid requirements. In the absence of marketwide pooling, this burden would vary by individual plants and groups of producers.

A marketwide pool thereby will contribute to market stability and the maintenance of an adequate and dependable supply of producer milk at reasonable prices.

Computation of uniform price. A key feature of marketwide pooling is the computation of prices to pay producers. Under the order adopted herein, which includes a seasonal base-excess plan, a weighted average price would be computed each month. During the months of August through February, the weighted average price would be the uniform price and would be used to pay producers. Essentially, such price is the weighted average value of all of the milk in the pool. It would be computed by adding together the classified use value (or total pool obligation) of all the handlers in the market. This total value is then divided by the amount of milk in the pool to arrive at a "uniform price" for producers.

In the months of March through July, uniform prices for base and excess milk would be computed by the market administrator. During each of these months, each producer would be paid on the basis of the producer's deliveries of base and excess milk. The following findings on the base-excess plan describe the computation of the uniform prices for base and excess milk and the computation of an individual producer's base.

In order to compute the uniform price or prices the market administrator must first receive a report of receipts and utilization from each of the handlers in the pool.

Under the proponent cooperative's proposed order, handler reports of receipts and utilization would have to be postmarked on or before the 5th day after the end of each month or be delivered in person not later than the 7th day of each month. A witness for the cooperative contended that such reporting dates were needed to provide the market administrator with sufficient lead time to receive all of the reports, compute the marketwide pool and announce the uniform price or prices by the 11th day of each month.

A spokesman representing five handlers who would be fully regulated under the proposed order stated that the dates included in the proposed order would not provide handlers sufficient time to accumulate the data necessary to file their reports of receipts and utilization. As an alternative, the handlers proposed that such reports be mailed by the 7th of the month instead of the 5th or delivered in person by the 9th day rather than the 7th as proponent suggested.

In support of the handlers' proposals, the spokesman testified that many handlers in the proposed area have one or more branch sales offices located in cities considerable distance from the office where the reports are filed. He stated that it takes considerable time to accumulate the sales information and transmit it to a central location from which the information for such report will be accumulated and submitted to the market administrator. He also testified that a mailing deadline of the 5th would create an impossible situation for handlers in certain months considering how the weekends and holidays fall. He also stated that delivery in person would be costly and time-consuming for distant handlers who failed to meet the 5th of the month mailing deadline.

The order should provide that a handler's report of receipts and utilization is due on or before the 7th after the end of each month. Based on the evidence in this proceeding, any such report mailed on the 7th by a handler who is expected to be subject to the new order should be received by the market administrator within two days. Such timing will provide the market administrator with sufficient time to receive the reports, review and correct them for obvious errors, compute each handler's value of milk at classified prices, compute the uniform price or prices, and announce such price or prices by the 11th day of the month.

The order should not specify a different due date if the report of receipts and utilization is delivered in person. Accordingly, such reports shall be considered to be made on time if they are postmarked on or before the date specified in the order. If a handler elects to hand-deliver the report, it must be so delivered to the market administrator not later than the due date.

Allowing handlers one full week to accumulate and submit their monthly reports of receipts and utilization will maximize the number of work days provided for the office staff to prepare such reports. For instance, if reports were due by the 7th, handlers normally would have a minimum of five work days to accumulate, prepare and mail their reports; otherwise, they could have as few as three days to get their information assembled and in the mail with a due date of the 5th.

The five handlers also proposed that the due dates of the 7th and the 20th for reports of base milk by handlers (on an aggregate and individual producer basis) be postmark dates. The order submitted by the proponent cooperative did not indicate whether the due dates for such reports were receipt or postmark dates. However, since all reports postmarked on or before the due date specified in the order will be considered to have been made on time, no change in the proposed language is needed and the intentions of handlers in this regard will be accommodated.

All of the other dates (for reports, price announcements, and payments) specified in the order should be adopted as they were proposed by the proponent cooperative. It should be noted that the Georgia Federal milk order provides the same sequence of due dates for such activities as are adopted herein. The Georgia marketing area is very similar to the marketing area defined herein, essentially statewide. Like this market,

it has several key metropolitan areas and the remainder of the area is predominately rural. There is no reason to believe that the same sequence of dates would not provide adequate timing under this new program.

Also, it should be noted that the dates for reports and payments adopted herein are similar to those provided in other Federal orders in the Southeast which are nearby and adjacent to this marketing area. Under the arrangement provided herein, handlers under the new order will be meeting about the same deadlines with respect to these reporting functions as handlers under nearby orders. Likewise, producers covered by this order will receive their payments at about the same time as producers located in the same general area but who are covered under other Federal orders.

Producer-settlement fund. Marketwide pooling requires the use of an equilization (producer-settlement) fund which enables all handlers in the market to pay the minimum uniform price or prices to their producers.

Payments into the producer-settlement fund would be made each month by each handler whose total classified use value of milk exceeds the value of his milk at the uniform price or prices. Monthly payments out of the producer-settlement fund would be made to each handler whose use value is below the value of milk at the uniform price or prices for the market. This transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price or prices as handlers whose Class I utilization exceeds the market average.

As adopted herein, payments by handlers into the producer-settlement fund would be due by the 12th day of each month so that the market administrator could make payments out of the producer-settlement fund by the 13th day of each month.

Such timing will enable the market administrator to receive the money in the fund and make the payments out of the fund each month at the earliest feasible date. In the event that the balance in the producer-settlement fund on the 13th is insufficient to make the required payments out of the fund, the market administrator would reduce uniformly such payments. However, the market administrator would complete such payments to handlers as soon as the necessary funds become available.

The payment schedule adopted herein following the announcement of the uniform price or prices has no slack. No one suggested, however, that a longer time be provided to accomplish these transactions. The primary concern of all interested parties in this regard at the hearing was that payments to producers not be delayed any longer than is absolutely necessary. The time schedule adopted herein recognizes the desires of interested parties in the market by providing minimal, but generally adequate transaction time between the filling of reports by handlers and the payment of individual producers to accomplish the necessary functions involved in marketwide pooling, it will require the cooperation of all handlers in the market to work properly. If problems in this regard develop, the issue could be explored at a future hearing.

Payments to producers and cooperative associations. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative, at not less than the applicable uniform price or prices. Provision also should be made for partial payments for milk received during the first half of the month.

Under the payment provisions adopted herein, a handler would be required to make a partial payment to producers who had not discontinued delivery of milk to such handler prior to the 25th day of the month for their producer milk deliveries during the first 15 days of the month. Such payment would be by the last day of the month and would be at not less than the Class III price for the preceding month or 90 percent of the preceding month's weighted average price, whichever is higher. Proper deductions authorized in writing by the producer could be deducted from the partial payment due such dairy farmer. If a producer discontinued shipping milk to a handler prior to the 25th day of any month or if a producer had no established base upon which to receive payments under the base-excess plan during March through July, the applicable rate for making partial payments would be the Class III price for the preceding month.

The order proposed by the proponent cooperative would provide that producers without bases be paid a partial payment for their producer milk deliveries during the first 15 days of the month at the same rate as producers who had established bases. This rate would be the higher of the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month. Paying producers who have no base and thus have only excess milk deliveries at the higher of these two suggested rates during the adopted base paying months of March through July could result in overpayments to such dairy farmers because the uniform price for excess milk would essentially be the Class III price. A partial payment for a producer's excess milk deliveries at 90 percent of the weighted average price for the preceding month could exceed the value of the milk at the uniform price for excess milk. The hearing notice included a proposal by five handlers to limit the partial payment to producers without bases in these months to the Class III price in the preceding month. Such a limit is appropriate for the foregoing reason and is incorporated in the partial payment provisions of the Alabama-West Florida order.

A similar overpayment problem could occur under the partial payment provisions proposed by the order proponent if a producer discontinues delivering milk to a handler shortly after the 15th day of the month. The order proponent recognized this at the hearing and suggested that the higher of the Class III price for the preceding month or 90 percent of the preceding month's weighted average price be paid only to producers who have not discontinued shipping milk to such handler prior to the 25th day of the month. DI suggested that producers who had not discontinued delivering milk to the handler before the 20th day of the month should receive their partial payments on the basis of the higher rate. In its brief, AMP supported DI's suggested date of the 20th.

It is concluded that the higher partial payment rate should apply only to those producers who have not discontinued shipping to the handler prior to the 25th day of the month. Providing a cutoff date of the 25th, as originally suggested by AMP at the hearing, will provide greater assurances to handlers that they will not overpay producers for their milk deliveries during the first 15 days of the month.

As AMP proposed, handlers would be required to pay producers on or before the 15th day of the following month at the applicable uniform price or prices for milk received from such producers in the preceding month. Final settlement for all of the producer's milk in the preceding month at the unfiorm price or prices would recognize the partial payment and any other proper adjustments verifiable by the market administrator.

Producers whose milk is covered under the rules and regulations of the Alabama Dairy Commission have been receiving their payments from the handlers buying their milk on or about the 20th day of each month for their deliveries during the first half of the month, and the final settlement for their deliveries during the month on or about

the 10th day of the following month. In this connection, four independent producers proposed that handlers be required to pay producers a partial payment on the 20th day of each month for the producer's milk deliveries during the first 15 days of the month and a final payment on the 10th day of the following month for the producer's milk deliveries in the preceding month. This was proposed so that they would not have to wait an additional 5 to 11 days to receive their partial and final payments for milk.

Final settlement by such an early date under a Federal order providing for marketwide pooling would not be possible. Handlers need a reasonable amount of time each month to file their reports of receipts and utilization with the market administrator. Likewise, the market administrator must, in turn, have adequate time to process such reports and compute the uniform price or prices. Time is also required for handlers to equalize their payments through the producer-settlement fund. The dates for producer payments provided in the attached order are the earliest practicable. Moreover, they are appropriate considering the reporting, equalizing and price computations that must take place prior to the final settlement with producers. In addition, as already indicated, the producers under this proposed new Alabama-West Florida order would receive the partial and final payments for their milk deliveries on or about the same date as other producers located in the same general area but covered under other Federal orders.

In the event a handler has not received from the market administrator the full producer-settlement fund payment by the date such handler is required to pay producers, the handler may reduce the payments to producers on a pro rata basis. Such reduction should not exceed the amount of the underpayment. The handler would be required to complete the producer payments on the next date for making such payments following the receipt of the balance due from the market administrator.

Provision also is made in the attached order for a cooperative association to receive payment from handlers for milk of producers who elect to market their milk through such association. Providing for a cooperative association to collect payments due individual producers who have authorized the cooperative to collect such payments on their behalf will permit the cooperative association to reblend the proceeds from the sale of such milk, as authorized by the Act. Also, it will facilitate the cooperative's movement of milk among pool plants and disposal of reserve milk supplies to other plants for manufacturing use.

As provided in the attached order, each handler upon request should pay cooperatives the full amount due for producers' milk in lieu of payments to individual producers. Both the partial and final payments to a cooperative association should be made at least 1 day prior to the date payments are due to individual producers. This will enable cooperative associations to pay the producers for whom they market milk on the same day other producers supplying the market are paid.

The proposed order would have permitted cooperatives to collect payments only for the producer milk of its members. However, since proponent suggested that a cooperative could be a handler on milk of producers who are not members of such cooperative in addition to the milk of members, the association should be permitted to collect payments with respect to the milk of nonmember producers who have authorized the cooperative to collect such payments. Such a payment procedure is appropriate in that it complements the treatment afforded the milk of producers for which the cooperative may be the handler. Accordingly, the new order will permit cooperatives to collect the payments due individual producers (members and other producers) for their producer milk deliveries.

In connection with providing for a cooperative to collect lump-sum payments due the individual producers, the proposed order included a provision that would require a written promise by a cooperative to reimburse the handler for the amount of any actual loss incurred by such handler because of an improper claim by the association. The order proponent testified that this provision was proposed to prevent a handler from paying for a producer's milk twice. He pointed out that if a producer's contract with the cooperative was terminated without informing the handler buying milk from such dairy farmer, and the handler pays the cooperative, a double payment on the milk could result. Since the producer would not be a member of the cooperative, the handler also would be obligated under the order to pay the individual producer for such milk. Under the cooperative's proposal, the association would be required to reimburse the handler for the amount of money the cooperative collected for a producer who had terminated a membership contract with the association.

The proposal thus was presented as providing some basis towards resolution of disputes that concern whether or not a producer is a member of a cooperative. The market administrator may make a determination as to who is marketing a producer's milk. However, except to the extent that a contract raises questions concerning qualification under the Capper-Volstead Act, disputes involving producer contracts with a cooperative association are not a Federal order concern. There are other procedures available to the parties at interest in the market to resolve such disputes. Since the record does not provide any other evidence that such a provision is essential, the new order need not include such a provision.

The proposed order did not specify a payment obligation on milk delivered to a pool plant by a cooperative association acting as a bulk tank handler. To be sure that all aspects of payments for producer milk are covered, the order should specify that pool plant operators shall pay a cooperative bulk tank handler at the uniform price or prices for the milk received from producers who have authorized the cooperative to collect payments for their milk. If such milk is paid for by the pool plant operator at the uniform price or prices, accounting for the milk under the order will be simplified considerably. This method of payment will facilitate any adjustment required when audit by the market administrator discloses an error in classification.

Payments to and from the producer-settlement fund for milk delivered to a pool plant by a cooperative bulk tank handler will be made directly between the pool plant operator and the market administrator. This procedure will place the responsibility for accounting for such milk and for its payment directly on the pool plant operator who processes the milk. If settlement were made through the cooperative association, i.e., when a pool plant operator settles with the cooperative at class prices and the cooperative pays into or collects from the producer-settlement fund, an unnecessary third party is entered into the transaction. By eliminating the cooperative as an intermediary between the pool plant operator and the market administrator with respect to transactions involving the producer-settlement fund, problems of financial responsibility, enforcement and subsequent audit adjustments will be greatly reduced.

For the foregoing reasons, the attached order would require a pool plant operator to pay the cooperative at least one day prior to the last day of the month for milk delivered to such plant during the first 15 days of the month by a cooperative bulk tank handler. The same partial payment rate that handlers pay individual producers would be used by handlers to make partial payments to cooperatives. By the 14th day of the following month, a pool plant operator would be required to make final settlement with the cooperative for the producer milk delivered to such plant in the preceding month by the cooperative as a bulk tank handler at not less than the appropriate uniform price or prices.

The attached proposed order provides that at the time final settlement is made for milk received from producers during the month, the handler is required to furnish each producer (or cooperative association) a supporting statement. This statment would indicate the month and identity of the producer, the daily and total pounds and average butterfat content of producer milk received from the producer, the minimum rate of payment required under the order, the rate used if it is other than the minimum rate, the amount and nature of any deductions, and the net amount of payment to such producer or cooperative.

Base and excess plan. A seasonal "base and excess" plan should be incorporated in the new order.

The purpose of a base-excess plan is to provide an incentive for producers to even out their milk production throughout the year, i.e., to encourage production in the months of seasonally low production and discourage excess production in the months of seasonally high production.

Associated Milk Producers proposed that a seasonal base-excess plan be used to distribute to producers the returns from the sale of their milk. In support of its base plan proposal, a witness testified that dairy farmers supplying the Alabama market are accustomed to base plans because they have been operating under some type of base or quota plan for at least 20 years. Producers in Alabama previously were covered by a quota plan under the Alabama Dairy Commission, which was declared illegal by the U.S. Fifth Circuit Court of Appeals in New Orleans. After the quota regulations were struck down, the cooperative operated a similar plan for its members. The cooperative indicated that it was using a 12-month base plan, which was similar to the quota plan, to pay its members at the time of the hearing. The witness also stated that the cooperative was shifting to the seasonal base plan the association was proposing for adoption in the new Alabama-West Florida order on August 1, 1980. He further testified that in his opinion, the proposed market's favorable seasonal production pattern primarily was the result of the existence of some type of base allocation program that encouraged more milk to be produced when fluid sales were high and discouraged excess milk production during the high milk production season.

Dairymen, Inc. (DI), supported the adoption of the seasonal base-excess plan proposed by AMP and essentially for the same reason, i.e., to maintain the market's favorable seasonal production pattern. A witness for DI testified that the cooperative operates a similar seasonal base plan for the members in the Alabama District of its Nashville Division.

At least one proprietary handler in Alabama also was operating a seasonal base and excess plan for its independent producers at the time of the hearing. A producer who sells his milk to such handler testified that he is paid for his milk deliveries in certain months in accordance with the terms and conditions of that plan. He stated that the base plan encourages him to produce more milk in the fall months when milk supplies in Alabama generally are short relative to the market's Class I needs. In his opinion, the base plan provides producers an incentive to tailor their feeding and breeding programs to achieve more level milk production throughout the year by encouraging more milk to be produced in the fall and less in the spring, thereby maximizing their returns under the order.

Southern Milk Sales (SMS) opposed the adoption of a base plan for the Alabama-West Florida market. A witness for the cooperative stated that the blend price for this high Class I utilization market would provide adequate incentives for producers to adjust their production patterns to receive the greatest returns for the sale of their milk, i.e., new producers will enter the market in the fall and established producers will gear their herd management toward fall production when such prices are high.

A base-excess plan should be included for the proposed Alabama-West Florida market. The Alabama market has developed a good seasonal milk production pattern over the years. Nevertheless, milk production for the market does fluctuate seasonally with supplies generally increasing in the spring and declining in the fall. The base plan will provide a means of encouraging a level seasonal production pattern so that the good seasonal coordination between milk supplies and Class I sales will be maintained.

The record indicates that some producers in Alabama have attempted to gear their feeding and breeding programs toward more milk production in the fall months of September and October when Alabama experiences a period of extreme heat and humidity. Because of the heat stress conditions during this time of year, milk production is a little more difficult for dairy farmers in Alabama than in some other areas of the country. To maintain their production level in these months, dairy farmers must manage their herds to bring more cows into production at this time. According to testimony presented at the hearing, a cow that is freshened in the high stress period (September or October) will never produce as much milk, due to the high temperatures, as a cow that is freshened in the spring when cooler temperatures generally prevail. In addition, cows will graze less in the early fall months as pasture conditions deteriorate because of the hot weather than they do in the spring.

Hence, to achieve and maintain level production throughout the year, producers incur certain economic costs by managing their herds in this manner as opposed to what might be the more natural cycle of cows freshening and producing milk for the Alabama-West Florida market.

Milk production and Class I sales have been in fairly good balance in the proposed market, although it is noted that much of the market's supply originates on farms located outside the marketing area. Data gathered by the Alabama Dairy Commission were presented at the hearing to indicate the market's favorable production-sales relationship. They indicated some seasonal fluctuations in production and Class I sales. For example, on the basis of 4-year (1976–79) averages, the relationship between the daily average producer milk supply and the daily average Class I sales ranged from a low of 109 percent in November to a high during the flush milk production months of 117 percent in March.

These data indicate a very small seasonal variation in milk production and Class I sales. However, it should be noted that not all of the milk diverted off the market by Alabama licensed handlers has been priced and pooled under the regulations of the Alabama Dairy Commission, which tends to indicate a more favorable production-sales pattern than would be expected under the Federal order.

If there is a large seasonal variation in milk production and Class I sales, serious marketing problems could be created for producers and especially for cooperatives supplying the market. These problems are centered on obtaining adequate supplies of milk for handlers' fluid needs in the months when milk production is short relative to the market's fluid needs and disposing of excess supplies during the months when milk production is more than adequate to meet the market's Class I needs.

For example, if milk production declines too much in the months when the fluid demand is high (September–January), the cooperative likely would need to import additional milk from beyond the local supply area to meet the market's fluid needs. Encouraging producers to supply the market's fluid needs in the short supply season would reduce the cost associated with purchasing milk produced in distant locations and transporting it to the market to fulfill the Class I demand of plants and consumers in this market. Such movements could involve considerable distances and therefore would be more costly in the future if fuel prices continue to rise.

Conversely, if milk production increases too much in the months when the fluid demand is low, the disposition of milk that is excess to the market's fluid needs would become a burden for producers and cooperatives because there is limited manufacturing capacity in the local area. There are only two relatively small plants in Alabama (other than soft-product plants) that manufacture milk. Hence, if excess milk supplies are generated, such milk must be transported to manufacturing plants located considerable distance from the major consumption centers in Alabama. The costs of such transportation are borne primarily by cooperatives.

Thus, producers, handlers and consumers would benefit from a low variation in milk production by minimizing the costs of obtaining additional supplies in the short production months and through reduced costs of marketing excess milk production associated with the fluid needs in the flush production months. In view of the foregoing, adoption of a base-excess plan for the new Alabama-West Florida market is appropriate for the purpose of maintaining reasonably level milk production throughout the year.

This issue concerns essentially just producers in that it deals with how the pooled value of milk would be divided among the producers supplying the Alabama-West Florida market. In such case, the views of producers are an important consideration. The record in this proceeding clearly shows that a majority of producers who will be supplying the new market prefer a base-excess plan as a means of distributing the returns for milk among producers.

The base-excess plan adopted in this decision is very similar to that proposed by the order proponent. Each producer would be assigned a base computed by dividing the producer's total pounds of producer milk in September through January (the base-forming period) by the number of days' production represented in such producer milk deliveries or by 120, whichever is more. A single delivery by a producer on every-other-day delivery would be considered two days' production in computing a base.

If a producer operates more than one dairy farm, a separate base should be computed for each such dairy farm. The proposed base-excess plan included in the hearing notice did not cover this point. However, the witness for the proponent of the order testified that in such cases, he preferred that a separate base be computed for each dairy farm of a producer. The order would provide a guideline to cover this type of situation.

As proposed by AMP, the months of September through January should be the base-forming period. It is during these months that milk production tends to be low relative to Class I needs. In order to establish a production level for which they will receive payment at the higher uniform price for base milk in the base-paying months, producers will tend to establish a higher level of production in the base-forming months. The uniform (weighted average) price would be the minimum order price payable to producers for producer milk delivered during the base-forming months of September through January. Such price would also be payable to producers in the months of August and February which would be neither base-forming nor base-paying months.

The base-paying months should be March through July, as proposed. These months form a period when milk production generally is high and Class I utilization of milk is low. Thus, it is a period when the base plan should discourage excessive production. This would occur because during the base-paying months, payments to producers would reflect a lower price for any excess producer milk delivered to the market. Thus, the operation of the base-excess plan should serve to maintain, or perhaps improve, the seasonal production pattern that producers desire.

"Base milk" would be the producer milk of a producer in each month of March through July that is not in excess of the producer's base multiplied by the number of days in the month. "Excess milk" would be the producer milk of a producer in each month of March through July in excess of the producer's base milk for the month. Excess milk would include all of a producer's milk deliveries during March through July if such dairy farmer has no base.

The market administrator each year would compute a new base for each producer and, by February 28, would notify each producer and the handler receiving the milk from such dairy farmer of the producer's base. The market administrator would also notify a cooperative, if requested, of the amount of base assigned to each producer-member.

In computing the uniform prices for base and excess milk, Class III producer milk would be assigned to excess milk first. If Class III producer milk in the market exceeds the pounds of excess milk deliveries by producers, the uniform price for excess milk will be the Class III price. In such case, the additional value for the remaining Class III producer milk as well as the values for Class I and Class II producer milk will be reflected in the uniform price for base milk.

As proposed by producers, the uniform price for excess milk should not be subject to a location adjustment. Since excess milk would represent basically producer milk classified in Class III (milk for manufacturing uses) to which no location adjustment is applicable, the uniform price for excess milk should not be subject to a location adjustment. There is essentially no difference in the location value of milk for Class III uses. The Class III price under the Alabama-West Florida order and other Federal milk orders is equal to the average price per hundredweight for the month of manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin. If a location adjustment were applied to the uniform price for excess milk, it could result in applying an excess price to the producer milk at various plant locations that is less than the value of manufacturing grade milk delivered to those same plant locations.

A producer generally would deliver milk continuously throughout the base-forming period. However, because of various circumstances (e.g., storm damage at the farm or to roads, temporary suspension of a health permit or temporary loss of market when cut off by a buying handler), a producer may be off the market for a limited number of days during the base-forming period. In recognition of this, it was proposed that

a producer who delivered at least 120 days' production during the base-forming period would have average daily deliveries computed on the same basis as a producer who delivered continuously throughout the entire period (by dividing the total producer milk deliveries by such dairy farmer during the five-month period by the number of days' production represented in such deliveries).

The requirement that a producer supply the market in the base-forming months in order to earn a base provides an incentive to ship to the Alabama-West Florida market instead of to other markets in the months when production is low relative to the demand for Class I milk. A producer who ships at least 120 days' production during the five-month base-forming period can reasonably be considered as being fully associated with the market. A producer who delivered less than 120 days' production should have a base determined by dividing total production in the base forming period by 120. Thus, a producer who may have been supplying the Class I needs of another market for a substantial part of the base-forming period would receive a base that reflects the producer's contribution toward supplying the fluid needs of the Alabama-West Florida market in such period.

The hearing notice included a proposal by four independent dairy farmers requiring that a producer ship milk at least 60 days during base-forming period to establish a base. At the hearing, a spokesman for the four farmers stated that they had decided to withdraw the proposal from consideration. There was no other testimony on the proposal.

The application of the base-excess plan adopted herein to new producers is essentially that proposed by AMP. One type of new producer coming onto the market in the base-paying period could be dairy farmers who had supplied the fluid milk needs of another order market or an unregulated market in the base-forming period. Milk produced on their farms in the base-paying months that becomes associated with the Alabama-West Florida market would represent production that is surplus to the Class I needs of the market with which they had been previously associated. It is appropriate, therefore, as provided herein, that in the base-paying months producers should receive only the excess milk price for deliveries of such milk under the Alabama-West Florida order.

In other instances, persons who have not previously supplied a Class I market may become new producers on the new Alabama-West Florida market. Included in this category would be dairy farmers who had previously been shipping manufacturing grade milk and persons starting new dairy farm operations. Before coming onto the market as a new producer, such a person would be expected to have anticipated in advance whether to begin shipping during the base-paying months of March through July or in any of the other seven months of the year. If the choice is to begin delivering as a new producer in one of the five base-paying months, presumably that decision would be made in recognition of the fact that the uniform price for excess milk would be received for milk delivered to the market in those months by producers without bases.

In some instances a "natural disaster" may cause a producer to suffer a significantly reduced rate of production or force such person to discontinue temporarily the production of milk. Unless provison is made in the order to give consideration to such occurrences in computing a producer's base, the producer would suffer an undue hardship. Thus, the order should specify certain conditions under which relief may be granted to a producer whose production was adversely affected in the base-forming period as the result of an occurrence beyond the control of such dairy farmer.

This can be achieved by providing that the base assigned to a person who was a producer within the preceding base-forming period may be increased to the producer's average daily producer milk deliveries in the month immediately preceding the month during which production was adversely affected by an allowable "hardship" condition. Such relief would be granted only after the producer submitted to the market administrator by March 1 a written statement that established to the satisfaction of the market administrator that the amount of milk produced on such dairy farmer's farm in the immediately preceding base-forming period was substantially reduced because of a condition beyond the producer's control, which resulted from:

(1) Loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd, as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

The conditions under which hardship relief (in the form of an increased base) may be granted a producer encompass most natural disasters that could result in reduced production or in the temporary discontinuance of production on the producer's dairy farm. Such a standard will provide the market administrator the guidance necessary for applying the provision in an objective manner.

The base-plan provisions proposed by AMP would provide such hardship relief by assigning to the producer a base equal to 90 percent of the producer's average daily producer milk deliveries in the month immediately preceding the month during which the hardship occurred. The record is unclear as to the exact purpose of using the month specified and reducing the deliveries by 10 percent. Presumably the proposal attempts to provide a reasonable basis for establishing a base when a disaster has adversely affected a producer's output during the base-forming period.

However, an analysis of daily average milk deliveries by dairy farmer members of AMP during the base-forming months in 1978–79 reveals that daily average deliveries increased an average of 2.8 percent from month to month during August through December. Thus, computing such a base by allowing only 90 percent of a producer's deliveries during the preceding month most likely would provide a base smaller than the producer would have had absent the hardship condition. Based on conditions in this market, the daily average deliveries for the month preceding a disaster is appropriate for computing a base under hardship conditions.

If a dairy farmer's milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period, a base should be assigned to such person in the same manner as if the dairy farmer had been a producer during such entire base-forming period. Such base would be calculated from all of the dairy farmer's deliveries that would have been producer milk if the nonpool plant had been a pool plant during such September through January period.

The order provisions covering the situation described in the preceding paragraph are modified somewhat from what was proposed by the order proponent. The provisions adopted herein clearly specify which base-forming period would be used if a nonpool plant became a pool plant after the beginning of the base-forming period. They also specifically identify which producer deliveries would count toward establishing a base for such dairy farmer.

To acquire pool status under the order a plant must dispose of a certain percentage of its receipts on routes in the marketing area or to other pool plants. Hence, when a nonpool plant becomes a pool plant it will most likely add Class I sales to the pool relative to such sales in prior periods when it was a nonpool plant. It is appropriate, therefore, that those dairy farmers who had been supplying the plant have bases computed for them according to their deliveries to the plant in the base-forming period.

Bases so assigned to such producers should not be transferable. Such producers would be receiving bases without having incurred any of the economic costs that the market's regular producers incurred in adjusting their operations to achieve more level production. Thus, any income received from the transfer of such bases in essence would be windfall gains, which should not be permitted.

The base earned by an individual producer who supplied the market in the preceding base-forming period should be transferable. This will facilitate the transfer of property when a baseholder dies or when the farm of a baseholder is sold. It will also facilitate adjustments by those producers desiring to expand or contract their operations. However, proper safeguards should be provided so that the transfer provisions may not be exploited at the expense of producers regularly supplying the market.

The amount of a base transferred could be in its entirety or in amounts of not less than 300 pounds. These limits, which were proposed at the hearing, are administratively practicable and should be adequate under conditions in the Alabama-West Florida market.

The proposed order provisions did not specify that base may be transferred only to another dairy farmer. However, under the base plan provisions adopted herein, only a producer may establish base, and only producer milk could be base milk. Since a base is useful only to producers, only producers should be permitted to hold base. There was no testimony presented at the hearing to indicate an intent that other persons should be permitted to hold base. Accordingly, the order provides in this regard that base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective.

Base transfers would be effective on the first day of the month following the date on which an application for transfer is received by the market administrator. However, since producers may not know their bases until February 28, they should be permitted to transfer base effective March 1 if the transfer application is received by the market administrator on or before March 15 as the order proponent suggested. Such application would be required to be on a form approved by the market administrator and signed by a baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, it would be required that the application be signed by all joint holders or the legal representative of the estate of any deceased baseholder. These provisions would insure that there will be no misunderstanding between the parties involved concerning transfers.

The base established by a partnership may be divided between partners on any basis agreed on in writing by them if written notification of the agreed upon division, signed by each partner, is received by the market administrator prior to the first day of the month in which the division is to be effective. This will facilitate the division of the assets of a partnership that is dissolved during the base-paying period. On the other hand, it will in no way affect the total quantity of base milk in the pool, irrespective of the manner in which the division of the base is made between the partners.

Likewise, two or more individual producers who establish bases separately and decide to form a partnership should be permitted to combine their bases. Although the proposed order would not have provided this, the new order is drafted to accommodate this situation. The combination of individual bases by producers forming a partnership would not affect the quantity of base milk in the pool.

A producer who on or after March 1 transferred all or part of the base held would not be permitted to receive other base by transfer that would be applicable within the March-July period of the same year. Also, a producer who received base by transfer on or after March 1 would not be permitted to transfer a portion of the base assigned to such dairy farmer to be applicable within the March-July period of the same year, but would be permitted to transfer the entire base. Adoption of these provisions will tend to insure that the exchange of bases between producers are bona fide transfers. Absent such provisions, the transferring of bases back and forth by two or more producers throughout the base-paying period could result in unwarrantedly increasing their share of the total payments under the order for producer milk at the expense of all of the other producers.

The first base-forming period under the proposed order is expected to be September 1982 through January 1983. Complete data would be available at the end of that period to compute bases. It would be appropriate, therefore, to delay application of the base and excess payment provisions of the order until March 1, 1983.

SMS, the cooperative that opposed adoption of a base plan for this market, repeated its opposition to such a payment plan in exceptions filed on behalf of its members. Exceptor contended that the purpose of the base plan as related in the recommended decision, i.e., to even out milk production throughout the year, is not consistent with proponent's testimony as to the reason it proposed the plan, i.e., to keep production geared as close as possible to the market's Class I sales. In the cooperative's view, since the objective of proponent would not be accomplished with adoption of a base plan for this market, such a plan should not be provided under the new order. Although the seasonal base-excess plan adopted herein will not relate milk production and Class I sales directly, if milk production is evened out on an annual basis, a better seasonal balance between milk production and Class I sales can be expected. This should satisfy the intentions of producers, and therefore the cooperative's exception is denied.

(e) *Administrative provisions.*

Charges on overdue accounts. The order should provide a charge on all handler obligations to the market administrator that are overdue. Such charge should be 1.5 percent per month and should apply on the first day that a payment is overdue and on the same day of each succeeding month until the obligation is paid. Payments subject to the charge would be those due the market administrator for the producer-settlement fund, order administration, marketing services, and audit adjustments.

Proponent proposed that unpaid handler obligations to the market administrator be increased 1.5 percent for each month or portion of a month that such obligation is overdue. The AMP spokesman stated that the intent of the proposal was to encourage prompt payment of handler obligations to the market administrator. The proponent's witness also testified that 18 percent was about the going annual rate for short-term (business) loans at the time of the hearing.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the marketwide pooling arrangement, it is necessary than handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative and marketing service funds is essential to the performance by the market administrator of the various administrative functions prescribed by the order. 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 that approximates the cost of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

It should be noted that late-payment charges are not a substitute for prompt payments by handlers. Those delinquent in their obligations would still be subject to legal enforcement action as authorized under the Act.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1.5 percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1.5 percent on the same date of each succeeding month until the obligation is paid. The late payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed. Also, the charge should apply whether the obligation is paid 1 day late or 10 days late, and should be applicable to both fully regulated and partially regulated handlers alike.

The order need not provide that the dates when payments to the market administrator are due be moved back whenever such a due date falls on a Saturday, a Sunday, or a national holiday. A group of handlers proposed that when a payment to the market administrator is due on a Saturday, a Sunday, or a national holiday, such due date be shifted to the next day that the market administrator's office is open for business, and payments received after the due date would be considered as having been made on time if postmarked not later than the second day prior to the due date. In support of the proposal, a handler spokesman testified that the purpose of the proposal was to assure that payments made in good faith by a handler and postmarked at least two days prior to the due date would not result in assessment of a late-payment charge.

The handlers' intent can be accomplished without adding a specific provision by making it clear that the payment due dates in the order shall be considered as having been met if the envelope bearing the payment is postparked not later than the due date. Obviously, monies hand delivered to the market administrator by the due date would not be subject to a late payment charge. Recognizing the U.S. Postal Service postmark for payment compliance purposes should serve to alleviate the concerns addressed in the proposal. If other related problems develop, the issue could be considered at a future hearing based on actual operating experiences.

Marketing services. The new order should provide for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator, and the cost should be borne by producers for whom the services are rendered. However, any cooperative association, if approved for such activity by the Secretary, may perform such services for its producers in lieu of having the market administrator perform the services.

AMP proposed that a marketing services provision be included in the new order and that it be funded by an assessment of 7 cents per hundredweight of production to be paid by the producers for whom the market administrator performs the prescribed services. The cooperative's spokesman testified that the 7-cent rate should provide adequate funds for the market administrator to provide marketing services to nonmembers, based on an analysis of the expense of such programs in other markets. Also, he noted that the rate provided in an order is a maximum rate that can be reduced by the Secretary if experience shows that the services can be provided for a lesser amount. He stated that a marketing services provision is needed because producers who are not members of a cooperative do not have such a program provided and that such producers would benefit from such services.

Several producers who were not members of a cooperative testified in opposition to including a marketing services plan in any order adopted for the proposed marketing area. Two key points were raised in such testimony. Most felt that the 7-cent rate was excessive and would reduce their returns unnecessarily. Also, most such producers expressed the view that a marketing services program was not warranted because, to their knowledge, they had experienced few, if any, problems of inaccurate weights and tests.

One producer, however, stated that the marketing services assessment rate appeared to be quite reasonable. Also, he expressed the view that the benefits of verified weights and tests could easily exceed the cost. He did, however, state that he would prefer to have an option of whether or not to participate in the marketing services program.

Another producer, speaking for more than 50 other producers, suggested a marketing services option on a plant by plant basis. He suggested that producers shipping to a plant would have to approve participation in a marketing services program before the market administrator would verify milk weights and butterfat tests of their milk deliveries to that plant. Still another producer testified that nonmembers should be allowed to do their own verifying of weights and tests. He indicated that he planned to build his own lab for such purpose.

The record clearly discloses that within the proposed marketing area, there is no governmental or regulatory agency that regularly checks the weights and butterfat tests of diary farmers' milk to verify that they are paid for the milk on the basis of accurate farm weights and butterfat tests. State agencies in both Alabama and Florida regularly test milk from dairy farms for butterfat content. However, such tests are not used to resolve disputes between dairy farmers and plants, or for the purpose of establishing that dairy farmers are paid for the actual quantities of milk and butterfat delivered to plants.

Accordingly, the Alabama-West Florida order should provide such services for such producers. A maximum rate of 7 cents per hundredweight appears to be a reasonable amount to assess producers to cover the expenses of conducting the program. If the marketing services program can be

operated satisfactorily for less money, the Secretary may reduce the effective rate without holding a hearing.

However, the suggestion that marketing services be provided on an optional basis cannot be adopted. The Act specifies that if a marketing service provision is included in an order, it must apply to all producers under the order. Likewise, while a laboratory operated by a producer could provide the producer with a check on butterfat tests, this is not what the Act contemplates as "verification of weights, sampling, and testing of milk purchased from producers." Tests performed in a producer's own laboratory could not be recognized as adequately fulfilling the marketing services requirement. Marketing services for producers who are not members of a cooperative that provides such services must be performed by the market administrator or under the market administrator's direction.

There is a need for a marketing service program in connection with the administration of a Federal milk order for the Alabama-West Florida area. The weighing and testing of the milk of all producers is closely related to the main provisions of the order, which are the classification and pricing provisions. The latter provisions are the basis of the computation of the minimum uniform price payable to producers.

The order requires all regulated handlers to submit to the market administrator each month a report showing the total quantity of skim milk and butterfat received from producers and the utilization of such skim milk and butterfat in the three price classifications provided. To verify that a handler has reported all receipts and disposition correctly and to insure that producers receive proper payment for their deliveries, the market administrator audits each handler's operation. The quantity of skim milk and butterfat received by a handler must balance, of course, with the quantities of skim milk and butterfat in the products processed and disposed of by the handler. This requires the availability of the weight and butterfat test of each producer's deliveries.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to other provisions of the order. There are no payments to other persons on such milk. Hence, there is no need to provide the same marketing services as are provided other producers.

The other service provided, that of furnishing market information, is designed to keep the producer informed of developments that might affect such producer's price or market outlet in order that the producer may better evaluate marketing conditions. The objective of the program is to aid producers to achieve and maintain orderly marketing conditions for their milk.

In the case of producers who market their milk through a cooperative association, the Act authorizes such cooperative to perform these marketing services, and the costs of these services normally are borne by such producers through membership dues.

Expense of administration. Each handler should be required to pay to the market administrator a proportionate share of the cost of administering the order. For this purpose, a charge of 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order) is provided.

The market administrator must have sufficient funds to administer properly the terms of the order. The Act provides that the cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and dispositions of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers (including milk diverted to nonpool plants) and on other source milk allocated to Class I milk.

The proposed order provides that a cooperative shall be the handler on milk it delivers in tank trucks from producers' farms to pool plants of other handlers. The cooperative is the handler on such milk basically for the purpose of making payments to its individual members. For pricing purposes, however, the handlers that receive such milk at their plants would treat it the same as any other direct receipts from producers.

The market administrator must verify by audit the receipts and utilization at each pool plant whether the plant operator buys milk directly from producers or through a cooperative as a bulk tank handler. Thus, the pool plant operator receiving such milk should pay the administrative assessment on it on the same basis as for producer milk received at the plant. The cooperative bulk tank handler would be liable only for the administrative assessment on the quantity of milk picked up at producers' farms that is not received at the pool plant.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) make specified payments (discussed elsewhere in this decision) into the producer-settlement fund on route dispositions in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of all receipts from dairy farmers computed as though such plant were a fully regulated plant.

In administering the order as it applies to partially regulated distributing plants, the market administrator incurs expenses in essentially the same manner as in applying the order to pool handlers, even though the order is not applicable to the partially regulated handler to the same extent as to fully regulated handlers. Hence, payment of the administrative assessment on the partially regulated handler's in-area sales only would reasonably constitute such handler's pro rata share of the administrative expense.

In the case of unregulated milk that enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at the regulated handler's plant are subject to verification by the market administrator. Hence, the regulated handler should be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to avoid duplication, an assessment should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

General provisions. The Alabama-West Florida order adopted herein incorporates, by reference, certain terms, definitions, and administrative provisions that are included in Part 1000 of the Code of Federal Regulations.

These provisions are common to all Federal milk orders, having been so adopted effective July 1, 1971 (36 FR 9844).

Under Part 1000, a market administrator was required to deliver a bond to the Secretary covering himself or herself and each employee designated to act in his or her stead. Pub. L. 92–310 exempted Federal employees from such bonding requirements. Hence, Part 1000 was changed so that all Federal milk orders would conform with Pub. L. 92–310. To accomplish this, on February 5, 1980 (45 FR 7777), the bonding requirements in Part 1000 were terminated.

Since Part 1000 is applicable to all Federal milk orders and was proposed for adoption under this new program, it was printed in the hearing notice for informational purposes of interested parties. As it appeared in the notice of hearing, it did not reflect the bonding change. Proponent witness testified that the cooperative intended to propose the identical general provisions for this order which are applicable to all other orders. Accordingly, the general provisions adopted in July 1971, and as changed in February 1980, should be, and hereby are incorporated by reference in this order.

The first section (§ 1000.1) states that the uniform provisions included in Part 1000 shall be a part of each Federal milk marketing order as if set forth in full in each order, except in any order where any such provision is expressly defined or modified otherwise.

The second section (§ 1000.2) includes definitions of five general terms used in all Federal milk orders: Act, Order, Department, Secretary, and Person.

The third section (§ 1000.3) deals with the designations, powers, and duties of the market administrator.

The fourth section (§ 1000.4) pertains to the continuity and separability of provisions in an individual order. For the most part, these are internal administrative rules and instructions to Department employees regarding procedures involved in the suspension, termination, or liquidation of any or all provisions of a Federal milk order.

The fifth section (§ 1000.5) describes a handler's responsibility with respect to records and facilities.

The final section (§ 1000.6) relates to the termination of obligations.

The general provisions of Part 1000 have the same intent and purpose in each Federal milk order. They have worked effectively. Adopting Part 1000 by reference for the Alabama-West Florida order will promote uniform application of these provisions, which have the same intent and purpose in all orders.

A detailed discussion of the need and basis for incorporating the general provisions in each order is contained in a decision issued by the Assistant Secretary on April 15, 1971 (36 FR 7514). Official notice was taken of this decision at the hearing held June 23–July 2, 1980, for this market. The record evidence indicates that the findings and conclusions of the 1971 decision and the statement of consideration in the 1980 termination order are equally applicable under current marketing conditions in the proposed Alabama-West Florida marketing area.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

(a) The tentative marketing agreement and the order, 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 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 proposed marketing agreement and the order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers as defined in the tentative marketing agreement and the order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1093.85 of the aforesaid tentative marketing agreement and the order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. In this regard, one exception not specifically dealt with elsewhere in this decision was received from a dairy farmer. The exception maintained that a Federal order for the proposed market is neither needed nor wanted, and charged that an order would benefit Dairymen, Inc., only. The exceptor also expressed a belief that individual dairy farmers had not been provided an opportunity to vote on the issuance of an order for the proposed marketing area.

Although this exception expresses the dairy farmer's views, the exception provides no basis for reversing the recommended decision to adopt an order for the Alabama-West Florida marketing area. Moreover, this decision includes an order to conduct a referendum to determine whether at least two-thirds of the affected producers favor issuance of the order. Thus, the concern about not having a vote is unfounded.

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 regulating the handling of milk in the Alabama-West Florida marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, 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 attached

order which is published with this decision.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the attached order regulating the handling of milk in the Alabama-West Florida marketing area is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be October 1981.

The agent of the Secretary to conduct such referendum is hereby designated to be Richard M. McKee.

Signed at Washington, D.C., on: January 28, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order[1] *regulating the handling of milk in the Alabama-West Florida marketing area.*

Findings and Determinations

(a) *Findings.* A public hearing was held upon a proposed tentative marketing agreement and order regulating the handling of milk in the Alabama-West Florida marketing area. 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 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 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 regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1093.85.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Alabama-West Florida marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as follows:

The provisions of the proposed marketing agreement and order contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on September 8, 1981, and published in the **Federal Register** on September 11, 1981 (46 FR 45542), shall be and are the terms and provisions of this order and are set forth in full herein subject to modifications in §§ 1093.7(c) and 1093.8(c).

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1093.1 General provisions.

Definitions

1093.2 Alabama-West Florida marketing area.
1093.3 Route disposition.
1093.4 Plant.
1093.5 Distributing plant.
1093.6 Supply plant.
1093.7 Pool plant.
1093.8 Nonpool plant.
1093.9 Handler.
1093.10 Producer-handler.
1093.11 [Reserved]
1093.12 Producer.
1093.13 Producer milk.
1093.14 Other source milk.
1093.15 Fluid milk product.
1093.16 Fluid cream product.
1093.17 Filled milk.
1093.18 Cooperative association.

Handler Reports

1093.30 Reports of receipts and utilization.
1093.31 Payroll reports.
1093.32 Other reports.

Classification of Milk

1093.40 Classes of utilization.
1093.41 Shrinkage.
1093.42 Classification of transfers and diversions.
1093.43 General classification rules.
1093.44 Classification of producer milk.
1093.45 Market administrator's reports and announcements concerning classification.

Class Prices

1093.50 Class prices.
1093.51 Basic formula price.
1093.52 Plant location adjustments for handlers.
1093.53 Announcement of class prices.
1093.54 Equivalent price.

Uniform Price

1093.60 Handler's value of milk for computing uniform price.
1093.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).
1093.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1093.70 Producer-settlement fund.
1093.71 Payments to the producer-settlement fund.
1093.72 Payments from the producer-settlement fund.
1093.73 Payments to producers and to cooperative associations.
1093.74 Butterfat differential.
1093.75 Plant location adjustments for producers and on nonpool milk.
1093.76 Payments by handler operating a partially regulated distributing plant.
1093.77 Adjustment of accounts.
1093.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1093.85 Assessment for order administration.
1093.86 Deduction for marketing services.

Base-Excess Plan

1093.90 Base milk.
1093.91 Excess milk.
1093.92 Computation of daily average base for each producer.
1093.93 Base rules.
1093.94 Announcement of established bases.

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

Subpart—Order Regulating Handling

General Provisions

§ 1093.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby

[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.

incorporated by reference and made a part of this order.

Definitions

§ 1093.2 Alabama-West Florida marketing area.

The "Alabama-West Florida marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the State of Alabama and the Florida counties of Escambia, Santa Rosa, Okaloosa and Walton, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone 1:
Alabama Counties: Cherokee, Colbert, De Kalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall and Morgan.

Zone 2:
Alabama Counties: Bibb, Blount, Calhoun, Chambers, Chilton, Clay, Cleburne, Coosa, Cullman, Etowah, Fayette, Jefferson, Lamar, Marion, Pickens, Randolph, St. Clair, Shelby, Talladega, Tallapoosa, Tuscaloosa, Walker and Winston.

Zone 3:
Alabama Counties: Autauga, Barbour, Bullock, Butler, Choctaw, Clarke, Conecuh, Crenshaw, Dallas, Elmore, Greene, Hale, Lee, Lowndes, Macon, Marengo, Monroe, Montgomery, Perry, Pike, Russell, Sumter, Washington and Wilcox.

Zone 4:
Alabama Counties: Baldwin, Coffee, Covington, Dale, Escambia, Geneva, Henry, and Mobile.
Florida Counties: Escambia, Okaloosa, Santa Rosa and Walton.

Zone 4a:
Alabama County: Houston.

§ 1093.3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1093.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1093.5 Distributing plant.

"Distributing plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1093.6 Supply plant.

"Supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1093.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition, except filled milk, equal to 50 percent or more of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1093.13; and

(2) Route disposition, except filled milk, in the marketing area is at least the lesser of a daily average of 1500 pounds or 10 percent of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1093.13.

(b) A supply plant from which fluid milk products are transferred to pool distributing plants. Such transfers must equal not less than 70 percent in each of the months of September through January, and 50 percent in each of the months of February through August, of the total quantity of Grade A milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1093.13 but excluding milk diverted to such plant) and handlers described in § 1093.9(c).

(c) A plant operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. Such deliveries must equal not less than 70 percent of the total producer milk of members of such cooperative association in each of the months of September through January, and 50 percent of such milk in each of the months of February through August. The plant's pool status shall be subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle Grade A milk.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) 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, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area;

(4) A plant qualified pursuant to paragraph (a) of this section which also meets the polling requirements of another Federal order on the basis of route disposition in such other marketing area and from which there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(5) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, or such plant has automatic pooling status under such other order.

§ 1093.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant or a govenmental agency plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or a governmental agency plant.

(e) "Governmental agency plant" means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1093.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1093.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1093.7(d); and

(g) Any person who operates an unregulated supply plant.

§ 1093.10 Producer handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than own farm production, pool plants, and other order plants;

(c) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production, pool plants, and other order plants; and

(d) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for such person's own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1093.11 [Reserved]

§ 1093.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such producer;

(2) Received by a handler described in § 1093.9(c); or

(3) Diverted from a pool plant in accordance with § 1093.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) A governmental agency plant exempt pursuant to § 1093.8(e);

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1093.44(a)(8)(iii) and the corresponding step of § 1093.44(b); and

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1093.13 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 § 1093.9(c); or

(c) Diverted by the operator of a pool plant or a cooperative association from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) In any month of February through August, not less than four days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of September through January, not less than ten days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during any month by a cooperative association shall not exceed 30 percent of the producer milk that the cooperative association caused to be delivered to, and is physically received at, pool plants during the month;

(4) 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 (c)(3) of this section. The total quantity of milk so diverted during any month shall not exceed 30 percent of the producer milk physically received at such plant during the month;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (c) (3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that will not be producer milk pursuant to paragraph (c) (3) or (4) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk;

(6) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(7) The cooperative association shall designate the dairy farm deliveries that are not producer milk pursuant to paragraph (c)(6) of this section. If the cooperative association fails to make such designation, no milk diverted by it to a nonpool plant shall be producer milk.

(8) Diverted milk shall be priced at the location of the nonpool plant to which diverted.

§ 1093.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1093.40(b)(1) from any source other than producers, handlers described in § 1093.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1093.40(b)(1);

(c) Products (other than fluid milk products, products specified in §1093.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1093.40(b)(1)) for which the handler fails to establish a disposition.

§ 1093.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:
Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1093.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1093.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1093.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of or marketing milk or milk products for its members.

Handler Reports

§ 1093.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1093.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1093.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1093.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1093.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1093.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer;

(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.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1093.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1093.32 Other reports.

(a) Each handler described in § 1093.9 (a), (b) and (c) shall report to the market administrator on or before the 7th day after the end of each month of March through July the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through July the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1093.30 and 1093.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1093.40 Classes of utilization.

Except as provided in § 1093.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1093.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1093.15; and

(6) In shrinkage assigned pursuant ot § 1093.41(a) to the receipts specified in § 1093.41(a)(2) and in shrinkage specified in § 1093.41 (b) and (c).

§ 1093.41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1093.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1093.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative assocation is the handler pursuant to § 1093.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1093.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1093.44(a)(12) and the corresponding step of § 1093.44(b);

(2) If the transferor-plant received during the month other source milk to be

allocated pursuant to § 1093.44(a)(7) or the corresponding step of § 1093.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1093.44(a) (11) or (12) or the corresponding steps of § 1093.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section.

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available.

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1093.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section.

(*a*) The transferor-handler or diverter-handler claims such classification in such handler's report of receipts and utilization filed pursuant to § 1093.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I

utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers by a handler described in § 1093.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1093.9(c) to another handler's pool plant shall be classified pursuant to § 1093.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1093.43 General classification rules.

In determining the classification of producer milk pursuant to § 1093.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1093.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1093.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1093.40, 1093.41, and 1093.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1093.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1093.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1093.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1093.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1093.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1093.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1093.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1093.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1093.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1093.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available

utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1093.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1093.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1093.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased

by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1093.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1093.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginnning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1093.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1093.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1093.44(a)(12) and the corresponding step of § 1093.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1093.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1093.50 Class prices.

Subject to the provisions of § 1093.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* For the first 18 months this order is fully effective, the Class I price shall be the basic formula price for the second preceding month plus $2.30.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1093.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1093.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1093.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1093.50(a) shall be adjusted by the amount stated in paragraph (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1093.2, the adjustment shall be as follows:

Adjustment per Hundredweight

Zone 1: Minus 20 cents
Zone 2: No adjustment
Zone 3: Plus 15 cents
Zone 4: Plus 37 cents
Zone 4a: Plus 20 cents

(2) For a plant located in any of the Tennessee and Georgia counties listed below, the adjustment shall be minus 20 cents;

Tennessee Counties

Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicol, Union and Washington.

Georgia Counties

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

(3) For a plant located in any of the Tennessee and Kentucky counties listed below or in the Fort Campbell military reservation, the adjustment shall be minus 45 cents;

Tennessee Counties

Bedford, Cannon, Cheatham, Clay, Coffee, Davidson, De Kalb, Dickson, Fentress, Franklin, Giles, Grundy, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson, and Wilson.

Kentucky Counties

Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

(4) For a plant located outside the marketing area and north of a line extending through the northern boundaries of Georgia, Alabama and Mississippi, and at a location not included in paragraphs (a) (2) and (3) of this section, the adjustment shall be minus 20 cents. Such minus adjustment shall be increasd 1.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Florence or Huntsville, Alabama;

(5) For a plant located outside the marketing area and south of a line

extending through the northern boundaries of Georgia, Alabama and Mississsippi, and not in the State of Florida or the Georgia counties listed in paragraph (a)(2) of this section, the adjustment shall be the adjustment applicable at Mobile, York, Tuscaloosa, Florence, Huntsville, Gadsden, Opelika or Dothan, Alabama, whichever city is nearest;

(6) For a plant located outside the marketing area and in the State of Florida, the adjustment shall be plus 55 cents.

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing 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 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 § 1093.44(a)(12) an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1093.9(c); and

(iii) The pounds of skim milk 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 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 § 1093.42(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 paragraph (b) (1) through (4) of this section.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1093.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1093.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of such handler's pool plants and of each handler described in § 1093.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1093.9(c) that were classified in each class pursuant to §§ 1093.43(a) and 1093.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1093.44(a)(14) and the corresponding step of § 1093.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1093.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1093.44(a)(9) and the corresponding step of § 1093.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1093.44(a)(7) (i) through (iv) and the corresponding step of § 1093.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1093.44(a)(7) (v) and (vi) and the corresponding step of § 1093.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1093.44(a)(11) and the corresponding step of § 1093.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1093.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for

each month and the uniform price for each month of August through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1093.60 for all handlers who filed the reports prescribed in § 1093.30 for the month and who made the payments pursuant to § 1093.71 for the preceding month;

(2) Add not less than one-half the unobligated balance in the producer-settlement fund;

(3) Add or subtract an amount equal to the total net value of the location adjustments computed pursuant to § 1093.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1093.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of August through February.

(b) For each month of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

§ 1093.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) the 11th day after the end of each month the applicable uniform price(s) pursuant to § 1093.61 for such month.

Payments For Milk

§ 1093.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1093.71, 1093.76, and 1093.77, and out of which he shall make all payments pursuant to §§ 1093.72 and 1093.77. Payments due any handler shal be offset by any payments due from such handler.

§ 1093.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator 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 § 1093.60.

(2) The sum of:

(i) The value at the uniform price(s), as adjusted pursuant to § 1093.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1093.9(c); 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 is computed pursuant to § 1093.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route 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.

§ 1093.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1093.71(a)(2) exceeds the amount computed pursuant to § 1093.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1093.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer. If the producer had discontinued shipping milk to such handler before the 25th day

of any month, or if the producer had no established base upon which to receive payments during the base paying months of March through July, the applicable rate for making payments to such producer pursuant to this paragraph in either case shall be the Class III price for the preceding month; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1093.74 and 1093.75, 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 § 1093.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer.

(b) On or before the day prior to the dates specified in paragraph (a) of this section, each handler shall make payment to the cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraph (a) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1093.72 by the 15th day of such month, such handler may reduce payments pursuant to paragraphs (a) and (b) of this section to producers on a pro rata basis but not by more than the amount of the underpayment. Such payments 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.

(d) Each handler pursuant to § 1093.9(a) who receives milk from a cooperative association as a handler pursuant to § 1093.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the day prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 14th day of the following month for milk received during the month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1093.74 and 1093.75, and less any payments made pursuant to paragraph (c)(1) of this section.

(e) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of March through July the total pounds of base milk received from the producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is other than the applicable minimum rate(s);

(6) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1093.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1093.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in § 1093.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1093.52(a) 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.

§ 1093.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to § 1093.30(b) and § 1093.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1093.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1093.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1093.60 for such handler shall include, in lieu of the value of other source milk specified in § 1093.60(f) less the value of such other source milk specified in § 1093.71(a)(2)(ii), a value of milk determined pursuant to § 1093.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1093.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1093.30(b) and 1093.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1093.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1093.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1093.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1093.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1093.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator from a handler pursuant to §§ 1093.71, 1093.76, 1093.77, 1093.78, 1093.85, and 1093.86, shall be increased 1.5 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1093.85 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 5 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 § 1093.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1093.9(c);

(c) Other source milk allocated to Class I pursuant to § 1093.44(a) (7) and (11) and the corresponding steps of § 1093.44(b), except such other source milk that is excluded from the computations pursuant to § 1093.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1093.76(a)(2).

§ 1093.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1093.73, shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;

(b) In the case of producers for whom a cooperative association that the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make 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 any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1093.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through July that is not in excess of the producer's base multiplied by the number of days in the month.

§ 1093.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of March through July in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1093.92 Computation of base for each producer.

(a) Subject to § 1093.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of September through January by the number of day's production represented by such producer milk or by 120, whichever is more. If a producer operated more than one farm at the same time, a separate computation of base shall be made for each such farm.

(b) Any producer who, during the immediately preceding months of September through January, delivered milk to a nonpool plant that became a pool plant after the beginning of such base-forming period shall be assigned a base calculated as if the plant were a pool plant during such entire base-forming period. A base thus assigned shall not be transferable.

§ 1093.93 Base rules.

(a) Except as provided in § 1093.92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. A base transfer to be effective on March 1 for the month of March must be received by the market administrator on or before March 15. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after March 1 may not receive by transfer additional base that would be applicable during March through July of the same year. A producer who received base by transfer on or after March 1 may not transfer a portion of the base to be applicable during March through July on the same year, but may transfer the entire base.

(c) The base established may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in an partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

(e) The base assigned a person who was a producer during any of the immediately preceding months of September through January may be increased to such producer's average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraph (e) (1), (2), or (3) of this section occurred, providing such producer submitted to the market administrator in writing on or before March 1 a statment that established to the satisfaction of the market administrator that in the immediately preceding September through January base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infections diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

§ 1093.94 Announcement of established bases.

On or before February 28 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through January and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

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Wednesday
February 3, 1982

Part IV

Department of the Interior

Bureau of Land Management

Proposed Oil and Gas Lease Sale 68; Outer Continental Shelf, Southern California

4310-84

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Outer Continental Shelf
Southern California

Proposed Oil and Gas Lease Sale 68

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to Sec. 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed sale notice. The following is a proposed sale notice for Sale 68 in the waters offshore Southern California. This notice is hereby published as a matter of information to the public.

Notice is hereby given that the area previously withheld from leasing as an adjunct to the Federal Ecological Preserve in Public Land Order 4587, March 21, 1969 (34 Federal Register 5655, March 26, 1969) is now being considered for leasing.

Robert F. Burford
Director, Bureau of Land Management

Robert F. Burford

Date: JAN 15 1982

Approved: JAN 29 1982

Donald Paul Hodel
Secretary of the Interior

Donald Paul Hodel

Proposed Notice of Sale
OCS Sale No. 68, Southern California

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended, (92 Stat. 629), and the regulations issued thereunder (43 CFR Part 3300).

2. Filing of Bids. Sealed bids will be received by the Manager, Pacific Outer Continental Shelf (OCS) Office, Bureau of Land Management, 1340 West 6th Street, Room 200, Los Angeles, California 90017. Bids may be delivered, either by mail or in person, to the above address until 4:00 p.m., p.s.t., June 1, 1982; or by personal delivery to the (place of sale), (address), (City and State), between the hours of 8:30 a.m., p.s.t. and 9:30 a.m., p.s.t., June 2, 1982. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., p.s.t., June 2, 1982. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published at __ FR ____; _____, 1982.

3. Method of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., p.s.t., June 2, 1982," must be submitted for each tract. A suggested form appears in 43 CFR Part 3300, Appendix A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received

shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of three decimal places after the decimal point, e.g., 50.123%, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3316. The suggested form for this statement to be used in joint bids appears in 43 CFR Part 3300 Appendix B. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All leases awarded for this sale will provide for a yearly rental payment and a minimum annual royalty of $8 per hectare or $3 per acre, or fraction thereof. The following systems will be utilized:

(a) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on tracts 68-9, 68-10, 68-13, 68-17, 68-23, 68-24, 68-57, 68-58, 68-59, 68-60, 68-61, 68-62, 68-63, 68-64, 68-65, 68-66, 68-67, 68-68, 68-70, 68-71, 68-72, 68-74, 68-78, 68-79, 68-80, 68-81, 68-82, 68-83, 68-84, 68-85, 68-90, 68-91, 68-92, 68-93, 68-94, 68-95, 68-96, 68-101, 68-124, 68-131, 68-139, 68-140, 68-148, 68-149, 68-150, 68-153, 68-154, 68-155, 68-156, 68-157, 68-158, 68-164, 68-165, 68-168, 68-169, 68-170, 68-171, 68-173, 68-174, 68-175, 68-199, 68-200, and 68-201 must be submitted on cash bonus basis with a fixed royalty of 16-2/3 percent.

(b) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the remaining tracts to be offered at this sale must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., p.s.t., June 2, 1982, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971). See Item 14, "Information to Lessees."

6. Bid Opening. Bids will be opened on June 2, 1982, beginning at 10:00 a.m., p.s.t., at the second address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, June 2, 1982, that bid will be returned unopened to the bidder, as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts submitted with a bid may be deposited in a suspense account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

9. Acceptance or Rejection of Bids. The United States reserves

the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of ___ or more per acre or fraction thereof or ___ or more per hectare or fraction thereof. (The Department of the Interior is considering increasing the minimum bid on a tract by a substantial amount over the previous $25 per acre or $62 per hectare.)

10. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFR 3316.5.

11. Leasing Maps/Official Protraction Diagrams. Tracts offered for lease may be located on the following leasing maps or official protraction diagrams which are available from the Manager, Pacific Outer Continental Shelf Office at the first address stated in paragraph 2:

(a) Outer Continental Shelf Leasing Maps, Channel Islands Area. Maps 6A, 6B and 6D sell for $1.00 each; Map 6C sells for $2.00.

(b) Outer Continental Shelf Official Protraction Diagram NI 11-10, San Clemente. This map sells for $2.00.

12. Tract Descriptions. The tracts offered for bids are as follows:

Note: There may be gaps in the numbers of the tracts listed.

TENTATIVE TRACT LIST OCS SALE #68

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6A (REVISED JULY 24, 1967)

Tract	Block No.	Description	Acres
68-001	55N 89W	All	4632.80
68-002	55N 88W	All	4542.04
68-003	55N 87W	All	4451.17
68-004	55N 86W	All	4360.19
68-005	54N 89W	All	5760
68-006	54N 88W	All	5760
68-007	54N 87W	All	5760
68-008	54N 86W	All	5760
68-009	54N 82W	1/	*3700
68-010	54N 76W	1/	* 160
68-011	53N 87W	All	5760
68-012	53N 86W	All	5760
68-013	53N 72W	1/	*3700
68-014	52N 86W	All	5760
68-015	52N 85W	All	5760
68-016	52N 84W	All	5760
68-017	52N 82W	All	5760
68-018	52N 73W	All	5760
68-019	52N 72W	All	5760
68-020	51N 87W	All	5760
68-021	51N 86W	All	5760
68-022	51N 85W	All	5760
68-023	51N 80W	All	5760
68-024	51N 79W	All	5760
68-025	51N 77W	All	5760
68-026	51N 76W	All	5760
68-027	51N 75W	All	5760
68-028	51N 74W	All	5760
68-029	51N 73W	All	5760
68-030	51N 72W	All	5760
68-031	50N 86W	All	5760
68-032	50N 85W	All	5760
68-033	50N 84W	All	5760
68-034	50N 82W	All	5760
68-035	50N 81W	All	5760
68-036	50N 78W	All	5760
68-037	50N 77W	All	5760
68-038	50N 75W	All	5760
68-039	50N 74W	All	5760
68-040	49N 85W	All	5760
68-041	49N 84W	2/	*5754.03
68-042	49N 83W	2/	*4378.54
68-043	49N 82W	2/	*2983.98
68-044	49N 81W	2/	*4235.62
68-045	49N 80W	2/	*3376.41
68-046	49N 79W	2/	*3950.41

TENTATIVE TRACT LIST OCS SALE #68

LEASE MAP NO. 6A (Continued)

Tract	Block No.	Description	Acres
68-047	49N 74W	All	5760
68-048	48N 85W	All	5760
68-049	48N 84W	2/	*4118.04
68-052	48N 73W	All	5760
68-053	48N 72W	2/	*5602.12
68-054	47N 84W	2/	*1406.43
68-057	40N 73W	2/	*975.14
68-058	40N 72W	2/	*3410.96
68-059	37N 73W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6B (REVISED JULY 24, 1967)

68-060	53N 71W	1/	*1200
68-061	52N 71W	1/	*5600
68-062	52N 70W	1/	*4000
68-063	51N 70W	E½, E½W½	4320
68-064	51N 69W	All	5760
68-065	51N 68W	S½N½, S½	4320
68-066	51N 67W	S½	2880
68-067	51N 66W	S½	2880
68-068	51N 62W,	1/	*2520
	50N 62W	N½NE¼, 1/	
68-070	50N 68W	All	5760
68-071	50N 67W	All	5760
68-072	50N 66W	All	5760
68-074	50N 61W,	1/	*2921
	50N 60W	1/	
68-078	49N 67W	All	5760
68-079	49N 66W	All	5760
68-080	49N 65W	All	5760
68-081	49N 64W	All	5760
68-082	49N 63W	All	5760
68-083	49N 62W	All	5760
68-084	49N 61W	All	5760
68-085	49N 60W,	1/	*4464
	49N 59W	1/	
68-087	48N 71W	2/	*3671.80
68-088	48N 70W	2/	*3690.13
68-089	48N 69W	2/	*4673.60
68-090	48N 68W	2/	*5742.67
68-091	48N 67W	All	5760
68-092	48N 66W	All	5760
68-093	48N 65W	All	5760
68-094	48N 64W	All	5760
68-095	48N 63W	All	5760
68-096	47N 59W,	1/	*5069
	47N 58W	1/	
68-101	45N 58W	2/	*2688.86
68-105	44N 58W	2/	*994.97
68-112	43N 58W	2/	*2005.77

LEASE MAP NO. 6B (Continued)

Tract	Block No.	Description	Acres
68-115	42N 62W	2/	*243.34
68-122	42N 54W	All	5760
68-123	42N 53W	All	5760
68-124	41N 71W,	2/	*5091.15
	40N 71W	2/	
68-125	41N 60W	2/	*4864.51
68-128	41N 51W	All	5760
68-129	41N 50W	All	5760
68-131	40N 70W	All	5760
68-132	40N 69W	All	5760
68-136	40N 51W	All	5760
68-137	40N 50W	All	5760
68-138	40N 49W	All	5760
68-139	39N 71W	All	5760
68-140	39N 70W	All	5760
68-141	39N 69W	All	5760
68-145	39N 50W	All	5760
68-146	39N 49W	All	5760
68-147	39N 47W	All	5760
68-148	38N 71W	All	5760
68-149	38N 70W	All	5760
68-150	38N 69W	All	5760
68-151	38N 47W	All	5760
68-152	38N 46W	All	5760
68-153	37N 71W	All	5760
68-154	37N 70W	All	5760
68-155	37N 69W	All	5760
68-156	36N 71W	All	5760
68-157	36N 70W	All	5760
68-158	36N 69W	All	5760
68-159	34N 41W	All	5760
68-160	34N 40W	All	5760
68-161	33N 41W	All	5760
68-162	33N 40W	All	5760
68-163	32N 40W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6C (REVISED APRIL 25, 1977)

68-164	36N 36W,	1/	*4461
	35N 37W,	NE¼NE¼	
	35N 36W	1/	
68-165	35N 38W	1/	*5100
68-168	34N 39W	All	5760
68-169	34N 36W	All	5760
68-170	33N 39W	All	5760
68-171	33N 38W	All	5760
68-172	32N 39W	All	5760
68-173	32N 37W	All	5760
68-174	32N 35W	All	5760

TENTATIVE TRACT LIST OCS SALE #68

LEASE MAP NO. 6C (Continued)

Tract	Block No.	Description	Acres
68-175	32N 34W	All	5760
68-176	32N 33W	1/	*5700
68-177	32N 32W	1/	*3900
68-178	32N 31W,	1/	*4900
	31N 31W	1/	
68-179	31N 39W	All	5760
68-180	31N 38W	All	5760
68-181	31N 37W	All	5760
68-182	31N 34W	All	5760
68-183	31N 33W	All	5760
68-184	31N 32W	All	5760
68-186	30N 37W	All	5760
68-187	30N 32W	All	5760
68-188	30N 31W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6D (APPROVED AUGUST 8, 1966)

Tract	Block No.	Description	Acres
68-195	20N 66W	All	5760
68-196	20N 65W	All	5760
68-197	20N 64W	All	5760
68-198	19N 66W	All	5760
68-199	19N 63W	All	5760
68-200	19N 62W	All	5760
68-201	19N 61W	All	5760
68-202	13N 54W	All	5760
68-203	13N 53W	All	5760
68-204	13N 52W	All	5760
68-205	12N 54W	All	5760
68-206	12N 52W	All	5760
68-207	12N 51W	All	5760
68-208	11N 53W	All	5760
68-209	11N 52W	All	5760
68-210	11N 51W	All	5760
68-211	10N 50W	All	5760
68-212	10N 49W	All	5760
68-213	10N 48W	All	5760

TENTATIVE TRACT LIST OCS SALE #68

OCS OFFICIAL PROTRACTION DIAGRAM, NI 11-10, SAN CLEMENTE (APPROVED SEPTEMBER 27, 1977)

Tract	Block No.	Description	Hectares
68-214	N751 E66 (426)	All	325.60
68-215	N751 E67 (427)	All	342.99
68-216	N751 E68 (428)	All	360.34
68-217	N750 E66 (470)	All	2304
68-218	N750 E67 (471)	All	2304
68-219	N750 E68 (472)	All	2304
68-220	N749 E67 (515)	All	2304
68-221	N749 E68 (516)	All	2304

* Estimated

1/ That portion seaward of the Three Geographical Mile Line.

2/ Seaward of straight lines defined by coordinates based on the California (Lambert) Plane Coordinate System, Zone 6, with X origin = 2,000,000 at 116° 15', and Y origin = 0.00 at 32° 10'; as follows:

	X	Y
1.	1 083 116.775	659 028.110
2.	1 090 706.145	668 411.986
3.	1 095 458.081	689 505.297
4.	1 089 764.637	706 897.326
5.	1 079 496.859	717 556.263
6.	1 067 952.171	722 765.464
7.	1 049 567.015	723 635.502
8.	1 046 245.123	723 092.415
9.	1 038 155.138	724 350.732
10.	1 032 254.837	724 355.602
11.	1 022 654.512	730 932.219
12.	1 019 326.153	732 622.546
13.	1 013 397.117	736 301.031
14.	989 692.237	739 534.295
15.	983 015.566	738 568.150
16.	968 383.353	732 739.562
17.	957 170.832	737 567.743
18.	936 446.824	743 185.260
19.	933 072.704	743 002.280
20.	928 459.797	743 236.506
21.	925 409.789	744 379.354
22.	915 538.620	747 443.255
23.	910 748.956	748 718.057
24.	899 713.001	750 272.216
25.	886 261.357	751 086.957

	X	Y
26.	878 730.328	749 810.080
27.	859 696.145	736 934.674
28.	852 938.315	737 775.497
29.	839 611.004	735 696.449
30.	831 912.313	734 113.427
31.	816 880.230	734 813.082
32.	801 204.129	729 901.097
33.	796 632.417	730 515.155
34.	789 160.912	739 918.764
35.	779 318.761	746 523.282
36.	777 402.971	750 484.062
37.	771 877.911	757 339.723
38.	767 915.796	760 722.078
39.	760 382.615	765 047.179
40.	740 272.507	767 604.303
41.	737 046.583	767 054.160
42.	727 246.513	762 837.874
43.	713 276.546	768 088.489
44.	703 420.467	768 297.318
45.	684 780.675	760 677.050
46.	670 966.876	732 206.934
47.	671 599.869	724 689.151
48.	674 371.152	716 183.286
49.	686 779.840	701 481.035
50.	690 029.831	699 142.297
51.	692 298.780	689 391.058
52.	701 747.522	675 677.421
53.	723 069.990	666 264.467
54.	735 049.054	665 081.067
55.	748 789.017	660 536.666
56.	764 228.804	661 054.023
57.	769 122.179	658 108.385
58.	772 836.313	650 753.300
59.	779 449.843	633 994.492
60.	792 078.702	628 782.802
61.	799 909.378	623 445.039
62.	804 520.649	620 503.974
63.	820 422.101	614 161.279
64.	830 174.377	613 631.191
65.	840 007.314	615 467.730
66.	848 179.204	619 149.401
67.	851 849.836	620 378.195
68.	872 385.591	629 382.180
69.	885 199.943	631 622.818
70.	897 823.727	639 091.019
71.	901 394.249	638 113.359
72.	925 712.146	634 751.562
73.	931 467.929	635 433.826
74.	939 736.895	633 861.638
75.	956 778.905	634 162.461
76.	966 857.459	637 824.916
77.	975 764.663	642 187.773
78.	985 465.332	642 167.877
79.	988 953.297	648 497.139
80.	999 386.345	644 365.129
81.	1 008 333.302	646 451.071
82.	1 019 643.123	651 576.513
83.	1 026 037.610	649 650.043
84.	1 037 229.744	646 868.729
85.	1 042 340.607	645 566.294
86.	1 049 479.392	645 430.853
87.	1 055 695.598	646 218.407
88.	1 058 718.100	646 989.213
89.	1 065 052.124	649 236.492
90.	1 068 364.568	651 053.089

13. Lease Terms and Stipulations. Leases resulting from this sale for tracts 68-132, 68-195, 68-198, 68-204, 68-206, 68-207, 68-208, 68-209, 68-210, 68-218, 68-219, 68-220 and 68-221 will be for an initial term of ten years. All other leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, Pacific Outer Continental Shelf Office, at the first address stated in paragraph 2.

(b) Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations, the term DCMOFO refers to the Pacific Area Deputy Conservation Manager, Offshore Field Operations of the U.S. Geological Survey, and the term Manager refers to the Manager of the Pacific OCS Office of the Bureau of Land Management.

Stipulation No. 1

(a) If the DCMOFO has reason to believe that biological populations or habitats exist and require protection, he shall give the lessee notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements. Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the DCMOFO and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

(1) Very unusual, rare, or uncommon ecosystems or ecotones.

(2) A species of limited regional distribution that may be adversely affected by any lease operations.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: (1) relocate the site of such operation so as not to adversely affect the resources identified; or (2) establish to the satisfaction of the DCMOFO, on the basis of the site specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The DCMOFO will review all data submitted and determine, in writing, whether a special biological resource exists and whether it may be significantly affected by the lessee's operations. The lessee may take no action until the DCMOFO has given the lessee written directions on how to proceed.

(b) The lessee agrees that if any area of biological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCMOFO, and make every reasonable effort to preserve and protect the biological resource from damage until the DCMOFO has given the lessee directions with respect to its protection.

Stipulation No. 2

If the DCMOFO, having reason to believe that a site, structure or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indicators are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the DCMOFO and the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the DCMOFO, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the DCMOFO, either that such operation shall not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the DCMOFO and the Manager for their review. Should the DCMOFO determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the DCMOFO has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCMOFO and make every reasonable effort to preserve and protect the cultural resource from damage until the DCMOFO has given directions as to its preservation.

Stipulation No. 3

(To be included in any lease resulting from this sale for tracts: 68-6, 68-7, 68-8, 68-9, 68-11, 68-12, 68-13, 68-14, 68-18, 68-19, 68-21, 68-25, 68-26, 68-27, 68-28, 68-29, 68-30, 68-34, 68-35, 68-36, 68-37, 68-38, 68-39, 68-44, 68-45, 68-52, 68-53, 68-59, 68-60, 68-61, 68-62, 68-63, 68-65, 68-66, 68-67, 68-68, 68-82, 68-83, 68-84, 68-85, 68-101, 68-105, 68-123, 68-128, 68-129, 68-137, 68-147, 68-159, 68-160, 68-162, 68-163, 68-168, 68-170, 68-171, 68-172, 68-173, 68-174, 68-175, 68-176, 68-177, 68-178, 68-182, 68-183, 68-184, 68-199, 68-205, 68-208, 68-209, 68-220, and 68-221.)

All or portions of this tract may contain mass transport deposits, steep slopes, or active faulting. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the DCMOFO's satisfaction that mass transport of sediments or faulting is unlikely, or that exploratory drilling operations, structures (platforms), casing, wellheads, and pipelines can be safely designed to protect the environment in case such mass transport or faulting occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of instability, either within or outside of this lease block.

If exploratory drilling operations are allowed, site-specific surveys shall be conducted to determine the potential for faulting and mass transport of sediments. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas is allowed, all active faults or mass transport deposits in the lease block must be mapped. The DCMOFO may also require soil testing before exploration and production operations are allowed.

Stipulation No. 4

(This stipulation applies to the following tracts located in military operating areas: 68-1 through 68-39, 68-57, 68-58, 68-59, 68-101, 68-105, 68-112, 68-125, 68-128 through 68-132, 68-136 through 68-141, 68-145 through 68-188, and 68-195 through 68-221.)

(a) The lessee agrees that prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

(b) The lessee, recognizing that mineral exploration and exploitation and recovery operations of the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel, and appropriate sheltering of personnel not evacuated (an appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances), will come into effect upon the order of the DCMOFO, after consultation with the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed 72 hours; however, any such suspension may be extended by order of the DCMOFO. During such periods equipment may remain in place.

(c) The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency, to the degree necessary to prevent damage to, or unacceptable interference with Department of Defense flight, testing or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be effected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area: provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

Stipulation No. 5

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer

Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors, or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the Western Space and Missile Center (WSMC), the Pacific Missile Test Center (PMTC), or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

Stipulation No. 6

(To be included only in leases resulting from this sale for tracts 68-101, 68-105, 68-112, 68-125, 68-164, 68-169, 68-204, 68-207, 68-212 and 68-213.)

No structures or drilling rigs will be allowed within that portion of the tract described below.

Tract No.	Restricted Portion
68-101	S1/2NE1/4, SE1/4
68-105	E1/2NE1/4
68-112	South and East of a diagonal line from NE corner to SW corner
68-125	South and East of a diagonal line from NE corner to SW corner
68-164	(To be determined later)
68-169	N1/2
68-204	NE1/4
68-207	E1/2
68-212	(To be determined later)
68-213	(To be determined later)

Stipulation No. 7

(a) Pipelines will be required: 1) if pipeline rights-of-way can be determined and obtained; 2) if laying of such pipelines is technologically feasible and environmentally preferable; and 3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the intergovernmental planning program for assessment and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local governments and the industry.

(b) Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the DCMOFO.

(c) Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Port and Tanker Safety Act of 1978 (33 U.S.C. 1221 et seq.).

Stipulation No. 8

(a) Wells. Subsea well heads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible and as appropriate, in such a manner as to allow commercial fisheries trawling gear to pass over the structure without snagging or otherwise damaging the structures or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the DCMOFO. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least ±50 feet (15.25 meters) at 200 miles (322 kilometers).

(b) Pipelines. All pipelines, unless buried, including gathering lines, shall have a smooth surface design. In the event that an irregular pipe surface is unavoidable due to the need for valves, anodes or other structures, it shall, as appropriate, be protected in such a manner as to allow trawling gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

14. Information to Lessees. The Department of the Interior will seek the advice of the State of California and other Federal agencies to identify areas of special biological or cultural resources.

Operations on some of the tracts offered for lease may be restricted by designation of fairways, precautionary zones, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq). Bidders are advised that because of a Precautionary Area established by the U.S. Coast Guard, surface occupancy will probably not be allowed on tract 68-165 and operations may have to be conducted from off the lease site.

Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Notice is hereby given that portions of tracts 68-3, 68-4, 68-7, 68-8, 68-15, 68-32, 68-34, 68-35, 68-36, 68-70, 68-112, 68-128, 68-129, 68-137, 68-138, 68-146, 68-151, 68-159, 68-163, 68-168, 68-170, 68-171, 68-172, 68-175, 68-180, 68-181, 68-182, 68-186, 68-202, 68-206, 68-207, 68-209, and 68-213 may contain a shallow "bright spot" seismic amplitude anomaly which may be indicative of a shallow gas deposit. Surface occupancy above this anomaly and drilling through the anomaly will not be allowed unless or until the lessee has demonstrated to the DCMDFO's satisfaction that a potentially hazardous accumulation of shallow gas does not exist or that exploratory drilling operations, structures (platforms), casing, and wellheads can be placed or drilling plans designed to assure safe operations in the area above the anomaly. This may necessitate that all exploration for and development of oil and gas be performed from locations outside the area of concern, either within or outside this lease block.

Lessees are encouraged to include a fisheries training program in their exploration and development plans. This training program should be designed to familiarize platform and shore-based supervisors and persons involved in vessel operations with the value of the commercial fishing industry, the methods of offshore fishing operations, and the potential hazards, conflicts, and impacts resulting from offshore oil and gas activities. This program should be formulated and implemented by qualified and experienced instructors in fishing activities, methods of communication, and navigational safety.

For those tracts listed in paragraph 13 above providing for leases with an initial period of more than 5 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to USGS either an exploration plan or a general statement of exploration intentions prior to the end of the ninth lease year.

Bidders are advised that Tract Numbers 68-082 and 68-095 may be deleted prior to the actual sale due to potential Congressional action.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Pacific Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

[FR Doc. 82-2768 Filed 2-2-82; 8:45 am]
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Reader Aids

Federal Register

Vol. 47, No. 23

Wednesday, February 3, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-4534
Automation	523-3408
Dial-a-Reg	
Chicago, Ill.	312-663-0884
Los Angeles, Calif.	213-688-6694
Washington, D.C.	202-523-5022
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4489-4672.....1
4673-4978.....2
4979-5188.....3

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12344.....4979
Proclamations:
4893.....4673

7 CFR

301.....4675
987.....4489
Proposed Rules:
319.....4693
1093.....5124

9 CFR

Proposed Rules:
201.....4668
203.....4668

10 CFR

Ch. I.....5010
2.....4490
9.....4676
50.....4497, 5010
516.....4493

12 CFR

265.....4981
545.....4498

13 CFR

101.....4676, 4981

14 CFR

39.....4498-4501
71.....4502
73.....4503, 4504
205.....4982
Proposed Rules:
Ch. I.....4523
39.....4523
71.....4527, 4528
73.....4529

15 CFR

Proposed Rules:
371.....4677
806.....4530

16 CFR

Proposed Rules:
13.....4532

17 CFR

200.....4982

18 CFR

271.....4504
Proposed Rules:
271.....4535
273.....4535
274.....4535

19 CFR

101.....4985
Proposed Rules:
4.....4535

20 CFR

21 CFR

81.....4677
404.....4985
416.....4985
522.....4678
546.....4678
Proposed Rules:
862.....4802

22 CFR

Proposed Rules:
203.....4535

23 CFR

Proposed Rules:
230.....4536

24 CFR

207.....4507

26 CFR

1.....4508
5e.....4680
7.....4681

27 CFR

Proposed Rules:
1.....4694
9.....5011

28 CFR

0.....4989

30 CFR

916.....4513
Proposed Rules:
906.....4694
946.....5013

32 CFR

706.....4989
1602.....4640
1605.....4640
1609.....4640
1618.....4640
1621.....4640
1624.....4640
1627.....4640
1630.....4640
1633.....4640
1636.....4640

1642 4640
1645 4640
1648 4640
1651 4640
1653 4640

33 CFR

100 4515
117 ..... 4516, 4517
165 4515
204 4990

40 CFR

52 4991
122 4992
146 4992
180 ..... 5001, 5002

Proposed Rules:

35 4704
52 ..... 4704, 5014, 5015
122 4706
260 4706
264 4706
265 4706
266 4706
403 4518

41 CFR

101-26 4681
101-47 4521

Proposed Rules:

101-41 ..... 4707, 4709

43 CFR

3200 5004

Public Land Orders:

5952 (Revoked by P.L.O. 6126) 5003
6104 5003
6126 5003

44 CFR

Proposed Rules:

67 ..... 4709-4712, 5016
70 ..... 4682, 4683

45 CFR

Proposed Rules:

302 4713

47 CFR

87 4684

Proposed Rules:

73 ..... 4537, 4538

48 CFR

Proposed Rules:

49 4713

49 CFR

1033 5006
1125 5006
Ch. X 4689
1033 ..... 4690, 4691
1100 4691

Proposed Rules:

171 4538
172 4538
173 4538
571 4541

50 CFR

671 5008

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Last Listing January 6, 1981

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.J. Res. 382 / Pub. L. 97–146 To permit the broadcasting in the United States of the International Communication Agency film "Let Poland Be Poland: A Day of Solidarity With the People of Poland". (Jan. 30, 1982; 96 Stat. 3) Price: $1.50.

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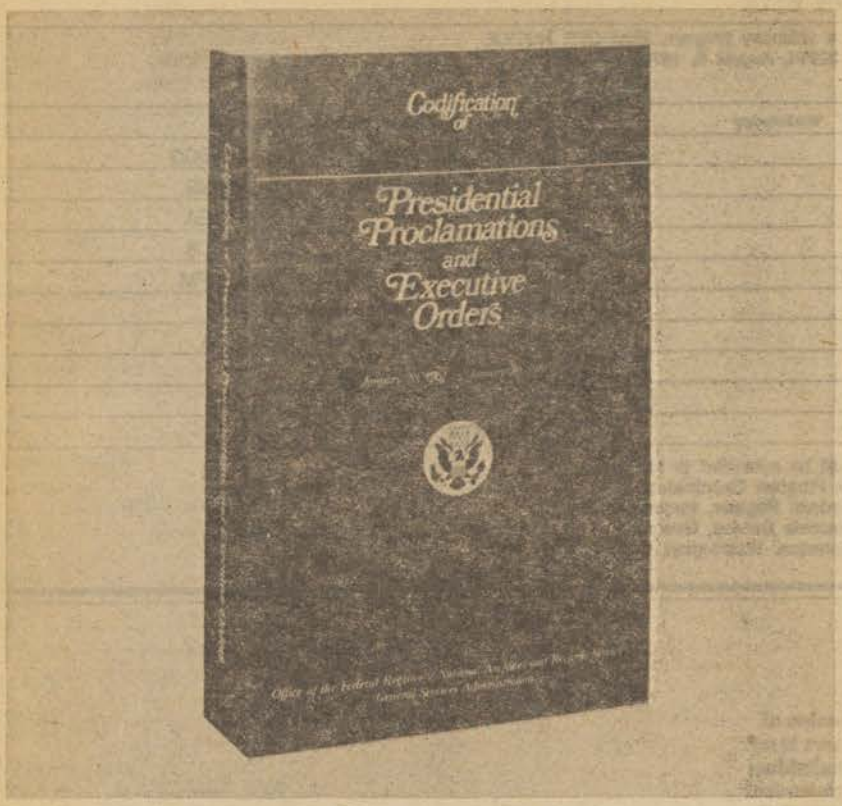

For those of you who must keep informed about Presidential proclamations and Executive orders, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20, 1981, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961–1981 period, along with any amendments, an indication of its current status, and, where applicable, its location in this volume.

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