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Thursday
March 20, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

Aviation Safety
Federal Aviation Administration

Banks, Banking
Federal Reserve System

Bridges
Coast Guard

Civil Rights
Tennessee Valley Authority

Credit
Federal Reserve System

Fisheries
National Oceanic and Atmospheric Administration

Government Property Management
General Services Administration

Handicapped
Federal Deposit Insurance Corporation

Marketing Agreements
Agricultural Marketing Service

Marine Safety
Coast Guard

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Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Milk Marketing Orders
Agricultural Marketing Service

Navigation (Water)
Navy Department

Plant Diseases and Pests
Animal and Plant Health Inspection Service

Postal Service
Postal Service

Public Lands (Mineral Resources)
Land Management Bureau

Security Measures
Coast Guard

Surface Mining
Surface Mining Reclamation and Enforcement Office

Water Pollution Control
Engineers Corps

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout,
Denver Federal Information Center,
303-236-7181,
for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
Earl Cabell Federal Building,
1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:

Dallas	214-767-8585
Ft. Worth	817-334-3624
Austin	512-472-5494
Houston	713-229-2552
San Antonio	512-224-4471,
	for reservations

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86-309]

Africanized Honey Bee; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Domestic Quarantine Notices by removing the "Africanized Honey Bee" regulations. Prior to the effective date of this document, these regulations quarantined a portion of Kern County in California because of the Africanized honey bee and restricted the interstate movement of bees of the genus *Apis* (in any life stage) and certain other regulated articles from the quarantined portion of Kern County. It has been determined that bees in the previously quarantined area are no longer a threat to other bees, and that the regulations are no longer necessary.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the National Program Planning Staff in charge of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION: A document published in the **Federal Register** on December 27, 1985 (50 FR 52929-52931) proposed to amend the Domestic Quarantine Notices (7 CFR Part 301 *et seq.*) by removing the "Africanized Honey Bee" regulations (previously contained in 7 CFR 301.94 *et seq.*; referred to below as the regulations). Comments were solicited for 30 days after publication of the proposed rule. No comments were received.

Prior to the effective date of this document, the regulations quarantined a portion of Kern County, California, and restricted the interstate movement from the quarantined area of the following regulated articles:

(a) Bees of the genus *Apis*, in any life stage;
(b) Fresh or frozen bee sperm;
(c) Equipment, and shipping and storage containers that have been used at an apiary;
(d) Unprocessed comb;
(e) Vehicles that have been used to carry regulated articles other than fresh or frozen bee sperm; and
(f) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) through (e) of this section, when it is determined by an inspector that it presents a risk of spread of the Africanized honey bee and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

The regulations were established to prevent the artificial spread of the Africanized honey bee (*Apis mellifera scutellata*) into noninfested areas of the United States. Based on surveys conducted by the Department and the California Department of Food and Agriculture, it has been determined that the regulations are no longer necessary for that purpose. For reasons discussed in the proposal and in this document, the proposal to remove the regulations is adopted.

Effective Date

The final rule relieves restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete the restrictions. Therefore, in accordance with the provisions of 5 U.S.C. 553, the final rule is made effective upon signature.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment deletes restrictions previously imposed on the interstate movement of certain bees and other regulated articles from a portion of Kern County, California. The previously regulated articles that are affected by this final rule represent significantly less than one percent of such articles in the United States.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Africanized honey bee.

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Africanized Honey Bee

§ 301.94-301.94-9 [Removed]

Accordingly, 7 CFR Part 301 is amended by removing "Subpart—Africanized Honey Bee" (§§ 301.94 through 301.94-9).

Done at Washington, DC, this 14th day of March 1986.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-6079 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California Reapportionment of Valencia Orange Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action reapportions the membership on the Valencia Orange Administrative Committee to assure equitable representation among the different marketing organizations in the industry.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

This action increases the number of members on the Valencia Orange Administrative Committee representing "other cooperatives" from two to three and decreases the number of members representing independents from three to two. Such allocation of representation reflects the proportional amount of Valencia oranges handled by the respective types of marketing organizations.

It is estimated that approximately 104 handlers of California-Arizona Valencia oranges will be subject to regulation under the marketing order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

This rule is issued under Marketing Order 908, as amended (7 CFR Part 908, 50 FR 1429, 34076), regulating the handling of Valencia oranges grown in Arizona and a designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as "the act". It is hereby found that this action will tend to effectuate the declared policy of the act.

On January 14, 1986, the Valencia Orange Administrative Committee (VOAC), which administers the marketing order locally, voted to recommend to the Department that membership on the committee be reallocated to more accurately reflect the quantity of oranges handled by the various marketing organizations eligible for membership on the committee. The committee recommended that the number of members in the other cooperative category of membership be increased by one grower member and that the members in the independent or unaffiliated category of membership be decreased by one grower member. Currently, there are two other cooperative member positions (one grower and one handler and their respective alternates) and three independent member positions (two growers and one handler and their respective alternates).

The committee's recommendation was based on § 908.29(n) of the marketing order which states that the committee may, with the approval of the Secretary, "reapportion the number of grower members or handler members on the Valencia Orange Administrative Committee who are nominated pursuant to § 908.22 (c) and (d). Any such changes shall be based, insofar as practicable, upon the proportionate amount of Valencia oranges handled by the respective types of marketing organizations, provided that each of the grower groups described in § 908.22 (c) and (d) shall be entitled to nominate at least one grower and one handler member together with their respective alternates." As of December 26, 1985, other cooperative marketing organizations handled 20.34 percent (4,848,070 cartons) of the Valencia oranges shipped to fresh domestic markets while independents handled 13.98 percent (3,332,700 cartons).

Notice of this rule was published in the February 14, 1986, issue of the **Federal Register** (51 FR 5530) and comments were requested thereon. Eight comments were received from growers, handlers, and marketers within the Valencia orange industry. Those commenters addressed a number of issues.

All commenters claimed that three grower cooperatives which currently operate in the California-Arizona Valencia orange industry, but which do not market their own fruit, should be placed in the independent category for representational purposes on the committee. The comments point out that, since such cooperatives do not market their own fruit, they are more "independent" in nature than "cooperative." However, § 908.104 of the order defines cooperative marketing organizations as those Capper-Volstead Cooperatives which either market their members' oranges or which perform handling functions, as defined in § 908.11, for their members' oranges. During the 1984-85 season, these three organizations applied for and received prorate bases and allotments to handle Valencia oranges under the terms of the marketing order. In addition, each organization paid assessments on oranges handled in fresh domestic markets. Thus, each meets the definition of "handle" specified in the marketing order. Each organization is considered to be a Capper-Volstead cooperative. Therefore, under current rules and regulations, all three organizations are correctly placed in the "other cooperative" category for representational purposes on the VOAC.

Two commenters proposed that reapportionment should be postponed until it can be dealt with under formal rulemaking procedures. Additional commenters claimed that the act requires formal rulemaking procedures in order to accomplish committee reapportionment and that such reapportionment accomplished by informal rulemaking is not authorized by the act. Some commenters also believed that definitions of the terms "marketing affiliation" and "handle" as used in connection with committee apportionment should be included in rulemaking proceedings on amendment of the order.

As previously indicated, § 908.29(n) of the Valencia orange order provides for reapportionment of VOAC membership between the "other cooperative" and "independent" categories based upon the proportionate amount of Valencia oranges handled by the respective types of marketing organizations. Accordingly, informal rulemaking procedures are authorized when such changes in proportionate amounts occur, as in the current situation. Postponing such reapportionment until formal rulemaking procedures can be accomplished would not be responsive to recent changes in industry structure. Failure to promulgate rules effectuating reapportionment would disregard the requirements of the order as it now exists. While refinements in the definitions of "marketing affiliation" and "handle" may result from a formal rulemaking procedure, such refinements are not necessary for the Department to proceed with this action.

One commenter stated that, since the structure of the VOAC was the subject of a formal rulemaking proceeding which concluded in 1985, the subject could not now be addressed under informal rulemaking. The recent amendment to the Valencia orange order was based on evidence of record developed during the rulemaking proceeding. Information on recent changes in the volume of Valencia oranges handled by the respective marketing groups was not available during the amendatory proceeding and therefore was not considered at that time.

A majority of the commenters expressed the opinion that reducing the number of independent members would result in a reduction or underrepresentation of diverse viewpoints on the VOAC. In fact, one commenter claimed that independent growers and handlers were the only individuals with such diverse viewpoints. While the number of independent members will be reduced by one, the remaining two members will have ample opportunity to express the diversity of opinions of their constituency. Also, any individual may attend committee meetings, talk or correspond with committee members or staff, or otherwise communicate their concerns. It is also unreasonable to conclude that only independent members have diverse opinions. A review of minutes of past VOAC meetings indicates that members freely express their views and opinions. Many proposed committee actions fail when put to a vote because of that diversity, and those actions which pass do not always do so unanimously.

Two commenters stated that this action could have a detrimental impact on small businesses by reducing such businesses' voice on the committee. However, as indicated above, individuals representing such small businesses will not have reduced access to committee members or staff and may continue to have their views made known.

One commenter said that this action is illegal because the Department has already conducted nomination meetings at which only two independent members were nominated. This is incorrect. Three independent members were nominated on February 26, 1986. However, only two independent members and their respective alternatives were selected by the Secretary to serve. This action was taken to preclude the possibility of selecting an individual who would serve for less than a month if the committee was reapportioned in the near future. In the interim, a holdover member in the independent category is serving on the committee to ensure that, until this rule is effective, there are three industry members representing independents—in full compliance with the marketing order. Upon reapportionment, the holdover position will be abolished, and an additional grower member will be nominated and selected to represent the other cooperatives.

One commenter stated that the percentages of fresh domestic oranges handled by other cooperative marketing organizations (20.34 percent) and independent marketing organization (13.98 percent) during the 1985 season are unverified and unaudited by the Department. However, such percentages were calculated from committee records derived from handler reports which were submitted to the committee pursuant to requirements of the marketing order. The Department has taken the necessary steps to verify their accuracy.

All comments submitted with respect to this final rule have been considered in full. While the comments raise some issues which deserve additional industry consideration, those issues could be resolved in a formal rulemaking proceeding expected to begin later this year. Resolution of those issues should not take precedence over the adoption of this final rule, and order requirements would not be met if this rule was delayed until formal rulemaking on those related issues was completed. It is found that this action will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The current term of office for committee members expired on January 31, 1986; and (2) a new committee should be appointed prior to the completion of deliberations on the marketing policy for the 1985–86 Valencia orange season.

List of Subjects in 7 CFR Part 908

California, Arizona, Oranges (Valencia).

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 908 continues to read as follows:

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

2. Paragraphs (a)(2) and (3) of § 908.102 are revised to read as follows:

§ 908.102 Nomination procedure.

(a) * * *

(2) All cooperative marketing organizations which are not qualified to nominate member and alternate members pursuant to § 908.22(b), or the growers affiliated therewith, shall nominate two grower members, two alternate grower members, two additional alternate grower members, one handler member, one alternate handler member, and one additional alternate handler member of the committee. The vote of each such organization shall be weighted, as provided in § 908.22(e), by the quantity of oranges which it handled during the marketing year in which the nominations are made.

(3) Not less than five meetings shall be held at such times and places throughout the production area as may be designated by the agent of the Secretary, at which growers who are not members of, or affiliated with, the organizations included under paragraphs (a)(1) and (2) of this section may vote. At each such meetings, the growers present shall nominate one grower member, one alternate grower member, one additional alternate grower member, one handler member, one alternate handler member, and one additional alternate handler member. The number of ballots to be cast in selecting the nominees at any such meeting shall be determined at that meeting. All growers at any such meeting shall submit their names and addresses to the agent of the Secretary.

* * *

Dated: March 17, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-6279 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1985-86 Crop Year for Certain Varietal Types of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule designates final free and reserve percentages for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins from California's 1985 production. They are intended to stabilize supplies and prices, and help counter the destabilizing effects of the burdensome supply situation facing the raisin industry. Free raisins can be shipped immediately to any market, while reserve raisins must be held by handlers in a pool for the account of the Raisin Administrative Committee (Committee). The Committee works with the USDA in administering the marketing order program. Under the order, reserve raisins may be: Sold later by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; sold to government agencies; or disposed of in other outlets noncompetitive with those for free raisins. Almost the entire 1985-86 reserve pool has been designated to be used in the 1986 raisin diversion program.

EFFECTIVE DATE: August 1, 1985 through July 31, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 475-3919.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

It is estimated that approximately 23 handlers of raisins will be subject to regulation under the Marketing Order for Raisins Produced from Grapes Grown in California during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden imposed on small entities by this action, if present at all, is not significant.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The relevant provisions of this part require that the percentages designated herein for the 1985-86 crop year apply to all Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins acquired by handlers from the beginning of that crop year; (2) handlers are marketing 1985-86 crop raisins of these varietal types and this action must be taken promptly to achieve its purpose of making the full trade demand quantity computed by the Committee for these varietal types available to handlers; (3) this action relieves restrictions on handlers; and (4) handlers are aware of this action which was unanimously recommended by the Committee at an open meeting and need no additional time to comply with these percentages. In fact, many handlers have been conducting their operations on the basis that no more than the full trade demand would be released for immediate sale to domestic and export markets.

This action designates final free and reserve percentages for the 1985-86 crop year for Natural (sun-dried) Seedless raisins of 59 percent and 41 percent, for Dipped Seedless raisins of 74 percent and 26 percent, for Oleate and Related Seedless raisins of 85 percent and 15 percent, for Zante Currant raisins of 74 percent and 26 percent, and for Monukka raisins of 100 percent, and 0 percent, respectively. These percentages apply to all standard raisins of these varietal types acquired by handlers during the 1985-86 crop year.

These final marketing percentage designations are established pursuant to §§ 989.54 and 989.55 of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989; 50 FR 1830), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Pursuant to § 989.54(a), on or before August 15 of each crop year, the Committee is required to hold a meeting to review shipment data, inventory data, and other matters relating to the supply of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee is required to compute a trade demand under a formula prescribed in that paragraph. In accordance with these provisions, the Committee computed and announced a trade demand of 211,045 tons for Natural (sun-dried) Seedless raisins, 9,489 tons for Dipped Seedless raisins, 4,172 tons for Oleate and Related Seedless raisins, 2,584 tons for Zante Currant raisins, and 1,556 tons for Monukka raisins.

As required under § 989.54(b), the Committee met on October 10, 1985, and computed and announced preliminary free and reserve percentages for each of these varietal types. The Committee determined that the field price for all five varietal types was firmly established. Hence, in accordance with § 989.54(b), preliminary free and reserve percentages were computed and announced by the Committee for the five varietal types to release 85 percent of each type's computed trade demand.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. Section 989.54(d) also provides that the difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage.

On December 30, 1985, the Committee met and recommended final free and reserve percentages for the 1985-86 crop

year and made its final production estimates for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins.

The Committee's final estimate of 1985-86 production of Natural (sundried) Seedless raisins totaled 359,221 tons, which includes the 1985 diversion tonnage of 59,378 tons (6,094 tons more than its preliminary estimate of 353,127 tons). Dividing the computed trade demand of 211,045 tons by the final estimate of production results in a final free percentage of 58.75 percent. The Committee rounded that percentage to 59 percent which results in a final reserve percentage of 41 percent.

For Dipped Seedless raisins, the Commttee's final estimate of 1985-86 production totaled 12,765 tons (332 tons more than its preliminary estimate of 12,433 tons). Dividing the computed trade demand of 9,489 tons by the final estimates of production for this varietal type results in a free percentage of 74.33 percent. The Committee rounded that percentage to 74 percent which results in a final reserve percentage of 26 percent.

For Oleate and Related Seedless raisins, the Committee's final estimate of 1985-86 production totaled 4,907 tons (127 tons less than its preliminary estimate of 5,034 tons). Dividing the computed trade demand of 4,172 tons by the final estimate of production for this varietal type results in a free percentage of 85.02 percent. The Committee rounded that percentage to 85 percent which results in a final reserve percentage of 15 percent.

For Zante Currant raisins, the Committee's final estimate of 1985-86 production totaled 3,509 tons (383 tons more than its preliminary estimate of 3,126 tons). Dividing the computed trade demand of 2,584 tons by the final production estimate results in a free percentage of 73.63 percent. The Committee rounded that percentage to 74 percent which results in a final reserve percentage of 26 percent.

For Monukka raisins, the Committee's final estimate of 1985-86 production totaled 1,492 tons (708 tons less than its preliminary estimate of 2,200 tons). Because the computed trade demand of 1,556 tons exceeds the final production estimate, a free percentage of 100 percent must be established and the reserve percentage shall be 0 percent.

Pursuant to § 989.54(c), the Committee at its December 30, 1985, meeting, computed and announced interim free percentages of 58 percent for Natural (sun-dried) Seedless, 73 percent for Dipped Seedless, 84 percent for Oleate and Related Seedless, 73 percent for Zante Currants, and 99 percent for Monukka raisins. These percentages released almost all of the computed trade demand for each of these varietal types. This decision reflects the strong marketing conditions which currently exist in domestic and export markets, and the Committee's belief that it's final production estimates are accurate.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee, and other available information, it is further found that the designation, under §§ 989.54 and 989.55, of final free and reserve percentage for the 1985-86 crop year for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

PART 989—[AMENDED]

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.238 is added to Subpart—Supplementary Regulations to read as follows:

Note. The following section will not be published in the Code of Federal Regulations.

§ 989.238 Final free and reserve percentages for the 1985-86 crop year.

The percentage of standard Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins acquired by handlers during the crop year beginning August 1, 1985, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	59	41
Dipped Seedless	74	26
Oleate and Related Seedless	85	15
Zante Currant	74	26
Monukka	100	0

Dated: March 17, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-6082 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Reg. D; Docket No. R-0565]

Definition of Deposit and Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board is adopting final rules amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions). Concurrently, the Board is adopting a final rule amending 12 CFR Part 217 (Regulation Q—Interest on Deposits). The amendments are being adopted after consideration of public comments received on proposed amendments to Regulation D (51 FR 27, January 2, 1986) and Regulation Q (51 FR 31, January 2, 1986).

The amendments are due to the expiration on March 31, 1986, of the Depository Institutions Deregulation Committee ("DIDC") and with it the authority to set regulatory interest rate ceilings on deposits other than demand deposits. In addition, the DIDC's rules authorizing money market deposit accounts ("MMDAs") expire on that date along with the provisions in Regulation Q prescribing early withdrawal penalties. The statutory prohibition against the payment of interest on demand deposits remains in effect.

Generally, the amendments to Regulation D are intended to preserve the current scheme of reserve requirements for transaction accounts, savings deposits (including MMDAs), and time deposits. The amendments to Regulation D include revised minimum early withdrawal penalties designed to distinguish between certain types of deposits for reserve requirement purposes. The amendments also include minor changes to the definitions in Regulation D and clarification of existing requirements for classifying accounts.

At this time, the Board is also adopting other technical amendments to Regulations D and Q. The Board will be amending the advertising rule in its Regulation Q at a later date.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778) or Patrick J. McDivitt, Attorney (202/452-3818), Legal Division, Thomas Simpson, Deputy Associate

Director (202/452-3546), Division of Research and Statistics, or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b) of the Federal Reserve Act, 12 U.S.C. 461(b), provides the Board with the authority to impose reserve requirements on deposits held by depository institutions, and section 19(a) of that Act, 12 U.S.C. 461(a), gives the Board the authority to define terms used in section 19 and to prevent evasions of section 19. Pursuant to this authority, the Board promulgated Regulation D. In the past, Regulation D definitions of deposit categories have been used in the regulation of the payment of interest on deposits under the Board's Regulation Q—Interest on Deposits (12 CFR Part 217), and this practice will continue. One such definition is the money market deposit account ("MMDA").[1]

The Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320) directed the DIDC to create the MMDA. As implemented by the DIDC, the MMDA permits depositors limited authority to make third party payments from the account. Senate Joint Resolution 97-271 (Pub. L. 97-457) also provided that the MMDA would not be considered a "transaction account" for purposes of Regulation D, provided that third-party payments were limited. Consequently, Regulation D excluded the MMDA from the definitions of "transaction account" and "demand deposit" even though funds could be withdrawn from an MMDA by check or draft.

On March 31, 1986, the regulations of the DIDC implementing the MMDA expire along with the regulatory limitations on the payment of interest on deposits and the prescribed early withdrawal penalties.[2]

In order to take these changes into account and to make clarifying and technical changes, the Board is amending its Regulation D. The amendments are designed to: (1) Preserve the MMDA, largely in its current form; (2) establish limited early withdrawal penalties for reserve requirement purposes; and (3) remove the $150,000 limit on business savings deposits and clarify the limit on telephone transfers from such accounts. In so doing, the amendments redefine the terms "transaction account," "savings deposit" and "time deposit" and, with certain exceptions, preserve the current scheme of reserve requirements on deposits. The amendments also make other clarifying and technical changes to Regulation D.

The principal amendments are discussed in detail below.

Preservation of the MMDA

The current Regulation D incorporates by reference the regulatory description of the MMDA adopted by the Depository Institutions Deregulation Committee ("DIDC"). Because the DIDC and its rules expire on March 31, 1986, Regulation D, as amended, will include the descriptive characteristics of the MMDA for the purposes of the regulation. Generally, the MMDA continues to be limited to six preauthorized, automatic, or telephone transfers per month. Three of the six transfers may be by check payable to third-parties. Consequently, an existing MMDA will continue to be treated as a "savings deposit" under the amended rule, provided the applicable transfer limitations are adhered to. Generally, comments favored retention of the current MMDA treatment.

The amendments also liberalize the treatment of certain transfers from MMDAs. Under existing rules, loan payments from an MMDAs. Under existing rules, loan payments from an MMDA to the institution itself are counted toward the six transfer limit, while such payments made from an ordinary savings account are not counted toward the three transfer limit currently applicable to such accounts for preauthorized or telephone transfers. Consequently, a depositor may make unlimited loan repayments from a savings account but only three per month from an MMDA. Several comments suggested treating both accounts similarly to reduce monitoring and administrative costs. The revised regulation provides for unlimited loan payments to the institution from an MMDA as well as from a savings deposit.

Currently, any account from which a payment can be made to a third party by debit card is a "transaction account." The Board's proposal would have permitted debit card transfers to third parties from MMDAs so long as they were counted towards the three check or draft limitation. The revised Regulation D incorporates this change.

Time Deposits and Early Withdrawals

Currently, section 19(j) of the Federal Reserve Act provides that a depositor may withdraw funds from a time deposit before maturity only under the rules and regulations of the Board. Under this authority, Regulation Q currently prescribes certain minimum penalties for early withdrawals from time deposits. Early withdrawal penalties help to maintain the distinction between a "transaction account" and a "time deposit" and to maintain the differences in maturities on time deposits primarily to enforce interest rate ceilings. The express statutory authority to prescribe rules regarding early withdrawals from time deposits expires on March 31, 1986 and the Board no longer will require such a penalty under that authority. Nevertheless, the Board still believes that the early withdrawal of funds from time deposits undermines the distinction between a "transaction account" and a "time deposit" and between time deposits of varying maturities for monetary policy purposes under Regulation D.

The Board is amending its definition of "time deposit" to provide that a time deposit with a minimum maturity of seven days or more from which withdrawals are permitted within the first six days after the date of deposit will be a "time deposit" only if it meets the other criteria for a time deposit and is subject to a minimum early withdrawal penalty equal to seven days' simple interest on the amount withdrawn.

Under Regulation D, nonpersonal time deposits with a maturity of one and one-half years or more are subject to a zero percent reserve requirement while nonpersonal time deposits with a shorter maturity are subject to a three percent reserve requirement. If a nonpersonal time deposit has a stated maturity or notice period of one and one-half years or more and early withdrawals are permitted after six days but within one and one-half years after the date of deposit, it must be subject to a minimum penalty equal to one month's simple interest on the amount withdrawn in order to be treated as a "nonpersonal time deposit" with a maturity of one and one-half years or more for purposes of Regulation D.

Any deposit failing to meet either the definition of "time deposit" or "savings deposit" will be considered a "transaction account" and will be subject to the transaction account reserve requirements.

[1] Similar categories were established under comparable authority of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board.

[2] Statutory limitations, such as the prohibition against the payment of interest on demand deposits and the eligibility requirements for NOW and ATS accounts, are not affected by the expiration.

The proposal had provided that after a partial early withdrawal, a deposit ceased to be a time deposit unless the remaining balance was placed in a new account. A number of commentators indicated that it would be burdensome to establish separate new accounts in such cases. Accordingly, the final rule provides that the remaining balance in a time deposit after a partial early withdrawal will continue to be regarded as a "time deposit" if subsequent early withdrawals are subject to the seven day penalty for withdrawals made within six days after the last partial withdrawal.

Several commentators expressed concern over the implementation of the early withdrawal penalty provisions in the definition of "time deposit." This issue was of particular concern to the National Credit Union Administration which noted that for Federal credit unions, limitations on early withdrawals were deregulated in 1982. The NCUA requested a transition period to allow modification of credit union forms.

In general response to these comments, under the final rule, existing time deposits will continue to be time deposits. The new early withdrawal penalties must be imposed on accounts opened on or after April 1, 1986. In response to the NCUA's concerns, the final rule provides a longer implementation period for institutions that currently lack a regulatory requirement for such a penalty, as in the case of Federal credit unions or nonfederally insured institutions that have no such penalty prescribed by state law or regulation. For these institutions, the penalty must be included in any account opened, renewed or to which additional deposits are made on or after January 1, 1987.[3]

Commentators also suggested retention of the current exceptions to the early withdrawal penalty rules. The final rule incorporates into Regulation D the exceptions for early withdrawals penalties currently specified by Regulation Q.

[3] For institutions with an existing stock of deposit contract forms, the Board believes that early withdrawal penalties may be implemented with an addendum attached to the existing form. For example, the following language could be used to implement the seven day penalty: "Addendum to (*time deposit or the institution's name for such deposit*) issued to (*name of customer*) on (*date*). This deposit has a maturity of (*state maturity*), if it is withdrawn within the six (6) calendar days following the date of deposit, or within six (6) days following any partial withdrawal made prior to the maturity date, such withdrawal shall be subject to a minimum penalty of seven (7) days' simple interest on the amount withdrawn."

Additional Early Withdrawal Penalties

In its proposal, the Board indicated an interest in retaining early withdrawal penalties in order to assist institutions in matching the maturities of assets and liabilities for purposes of safety and soundness of the institutions. A number of comments supported this concept. The Board also indicated that it would consult with the federal depository institution regulatory agencies concerning the appropriate structure and use of penalties for this purpose. This issue has been raised with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Home Loan Bank Board. In proposed regulations adapting to the expiration of the DIDC, the Federal Home Loan Bank Board also requested comment on the retention of early withdrawal penalties for this purpose. The Board intends to study the economic and legal issues relating to imposing early withdrawal penalties for safety and soundness purposes in cooperation with the other federal depository institution regulatory agencies. In the interim, the Board continues to believe that such penalties serve a useful purpose in maintaining the stability of an institution's liabilities, and institutions are encouraged to consider including them in their time deposit contracts.

Transfers From Savings Deposits

Under existing regulations, a depositor may make up to three preauthorized or telephone transfers per month from a savings deposit to another account of the depositor or a third person. MHDAs permit up to six preauthorized, telephone or automatic transfers per month.

The final rule permits automatic transfers to be included within the three transfers per month permitted for savings deposits, in order to make the transfer limitations more consistent with the transfer limitations applicable to MMDAs.

Enforcement of Transfer Limitations

Under the proposed rule and the final rule, the definition of "savings deposit" includes an ordinary savings account and an MMDA unless the depositor is authorized to exceed the transfer limitations for such accounts. If the depositor is authorized to exceed the transfer limitation, the account would be considered to be a "transaction account" for the purposes of Regulation D reserve requirements. (Such account would not be a "demand deposit" for purposes of the Regulation Q prohibition against payment of interest on demand deposits if the depositor is eligible to hold another type of transaction account, such as a NOW account or an ATS account, that would permit the particular excess transfers.)

Commentators expressed concern that under the proposal, an excess transfer might result in automatic reclassification of the account even though the transfer was an isolated occurrence and the depository institution could not prevent the occasional excess transfer at the time it occurred. The final rule incorporates the procedures for monitoring accounts on an *ex post* basis that are currently specified in § 217.7(g)(5)(ii) of Regulation Q for MMDAs.

Under this procedure, institutions must contact customers who exceed the transfer limitations on more than an occasional basis. For customers who continue to violate the transfer limitations after being contacted, the institution must close the account or take away its transfer and draft capacities. If an institution continues to permit recurring excess transfers from a savings deposit or an MMDA or fails to maintain procedures to enforce the transfer limitations, the account may be determined to authorize such excess transfers and the institution may be required to reclassify the account as a "transaction account." For example, if the depositor is eligible to maintain a NOW account and excess transfers are made by check, the account may be required to be reclassified as a NOW account against which transaction account reserves will be required to be held. If the depositor is not eligible to hold a NOW account, the account may be required to be reclassified as a demand deposit on which interest could not be paid under Regulation Q.

Business Savings Deposits

The proposal removed the separate definition of savings deposit from Regulation Q and relied instead on the Regulation D definition. This change eliminated the current $150,000 limitation on business savings deposits, this bringing the treatment of business savings deposits in line with the treatment of MMDAs. All comments on the proposal to remove this limitation supported the change.

This change also limited business telephone transfers from a savings deposit to three per month. If a depository institution authorized a business depositor to exceed the applicable transfer limitation, however, the institution may be required to reclassify the account as a "demand deposit" because businesses are not

authorized to maintain NOW accounts or ATS accounts. The final rule also retains this limitation.

Miscellaneous

1. The proposal treated transfers made by remote (or home) computer or other telecommunications access device, other than an ATM, as transfers counting toward the telephone transfer limitations. The few comments that were received on this issue were divided. The Board is amending its definitions of "transaction account" and "savings deposit" (including "MMDA") to clarify that each such transfer should be counted toward the monthly limitations because there is no practical difference between the customer using data signals from a site remote from the premises of the depository institution to order transfers and using oral commands over the telephone to order transfers.

2. A number of comments on the proposal expressed concern that the wording of the draft regulation seemed to indicate that the Board was seeking to place limits on withdrawals from savings deposits and MMDAs at ATMs where no such limits currently exist. The Board intended no such change. The final rule incorporates language currently found in Regulation Q delineating permissible withdrawals from MMDAs at ATMs in the definition of savings deposits, including the definition of MMDAs.

3. Under the existing definitions in Regulation D, the term "transaction account" includes demand deposits, NOW accounts, and ATS accounts. Currently, the term "demand deposit" in Regulation D includes any deposit that is not a "time deposit" or a "savings deposit." Currently, NOW accounts and ATS accounts are "savings deposits" and therefore are not "demand deposits." Under the revised definitions, the term "transaction account" continues to include "demand deposits," NOW accounts, and ATS accounts and specifically provides that the term includes any deposit that is not a "time deposit" or "savings deposit." The definition of "demand deposit" expressly excludes NOW accounts and ATS accounts. NOW accounts and ATS accounts enjoy a statutory exemption from the prohibition against the payment of interest on demand deposits and, under the amendments to Regulation Q being adopted concurrently with these amendments, the Regulation D definition of demand deposit is used in Regulation Q to define those accounts on which the payment of interest is prohibited.

4. The Board is making technical amendments to other portions of the regulation to remove obsolete terms and requirements. These technical amendments include the following provisions:

a. Section 204.3(h) of Regulation D provides for a phase-in of the carryover of excesses or deficiencies for depository institutions that report reservable liabilities weekly. Because the phase-in is now complete, the Board is simplifying the section and eliminating its obsolete phase-in schedule.

b. Section 204.4 prescribes transitional adjustments for computing federal reserve requirements. Reserve phase-in schedules were established in 1980 for member, former member, and nonmember depository institutions. Because several of these transitional schedules have been completed, and because the statute providing that MMDAs are not subject to the phase-in expires on March 31, 1986, the Board is revising §204.4, and cross references in other sections of the regulation, to remove obsolete provisions and schedules.

c. Section 204.8(e) provides that the failure of an international banking facility to comply with the requirements of §204.8 may cause it to be subject to the limitations on the payment of interest on time deposits contained in the Board's Regulation Q. Because these limitations expire on March 31, 1986, the Board is deleting the cross reference.

5. Finally, nonpersonal MMDA-type deposits held by depository institutions (other than Hawaiian nonmember institutions), will be subject to the phase-in schedules for federal reserve requirements rather than to full reserve requirements beginning with April 1, 1986. The Board has determined that for weekly reporters full reserves shall continue to be maintained on these deposits until the reserve maintenance period for nontransaction accounts beginning April 24, 1986, which corresponds to the computation period commencing March 25, 1986. For quarterly reporters, full reserves shall be maintained until the reserve maintenance period commencing April 17, 1986, which corresponds to the quarterly computation period beginning March 18, 1986. Hawaiian institutions will continue to be governed by the Board's December 13, 1985 amendment to Regulation D (50 FR 51508; December 17, 1985).

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, the Board recognized a potential transition problem for credit unions and other entities not now subject to regulations requiring early withdrawal penalties. It acted to alleviate this problem by delaying the effective date of its requirements for such penalties for such institutions until January 1, 1987. It is the Board's view that the amendments will not impose any additional reporting or recordkeeping requirements. To a large extent, the amendments retain the current reserve maintenance and deposit reporting system. Obsolete terms and provisions are being removed from the regulation to simplify it, and several of the clarifying amendments ensure more liberal treatment for savings deposits and MMDAs. This rule applies to all depository institutions. It is not anticipated that the amendments will have a negative effect on the ability of small depository institutions to attract deposits.

This rule relieves certain existing regulatory restrictions on depository institutions, preserves current policies regarding the treatment of these deposits under the regulation, and replaces statutory and regulatory provisions expiring March 31, 1986. Accordingly, the Board finds good cause for implementing this rule on April 1, 1986, which is within thirty days after the date of publication.

List of Subjects in 12 CFR Part 204

Banks, banking; Federal Reserve System; Foreign banking.

Pursuant to its authority under section 19(a) of the Federal Reserve Act (12 USC 461(a)), the Board is amending Part 204 as follows:

PART 204—[AMENDED]

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

Authority: Secs. 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 461, 601, 611); and sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105), unless otherwise noted.

2. In § 204.2, the introductory text and paragraphs (b); (c); (d); (e); (f)(1)(i), (ii), and (v) are revised; and (f)(3) is added to read:

§ 204.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

* * * * *

(b)(1) "Demand deposit" means a deposit that is payable on demand, or a deposit issued with an original maturity or required notice period of less than seven days, or a deposit representing

funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. Demand deposits may be in the form of:

(i) Checking accounts;

(ii) Certified, cashier's and officer's checks (including checks issued by the depository institution in payment of dividends);

(iii) Traveler's checks and money orders that are primary obligations of the issuing institution;

(iv) Checks or drafts drawn by, or on behalf of, a non-United States office of a depository institution on an account maintained at any of the institution's United States offices;

(v) Letters of credit sold for cash or its equivalent;

(vi) Withheld taxes, withheld insurance and other withheld funds;

(vii) Time deposits that have matured or time deposits upon which the contractually required notice of withdrawal as given and the notice period has expired and which have not been renewed (either by action of the depositor or automatically under the terms of the deposit agreement); and

(viii) An obligation to pay, on demand or within six days, a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the depository institution, where the account of the institution's customer already has been debited.

(2) The term "demand deposit" also means deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which the depositor is authorized to make withdrawals or transfers in excess of the withdrawal or transfer limitations specified in § 204.2(d)(2) for such an account and the account is not a NOW account, or an ATS account or other account that meets the criteria specified in either § 204.2(b)(3)(ii) or (iii) below.

(3) "Demand deposit" does not include:

(i) Any account that is a time deposit or a savings deposit under this Part;

(ii) Any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and either—

(A) Is subject to check, draft, negotiable order of withdrawal, share draft or similar item, such as an account authorized by 12 USC 1832(a) ("NOW Account") and an MMDA as described in § 204.2(d)(2)(ii), provided that the depositor is eligible to hold a NOW account; or

(B) From which the depositor is authorized to make transfers by preauthorized transfer or telephonic (including data transmission) agreement, order or instruction to another account or to a third party, provided that the depositor is eligible to hold a NOW account;

(iii) Any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer of credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such other account, such as accounts authorized by 12 USC 371a (automatic transfer account or ATS account), provided that the depositor is eligible to hold an ATS account;

(iv) Any obligation that is a time deposit under § 204.2(c)(1)(iv);

(v) Checks or drafts drawn by the depository institution on the Federal Reserve or on another depository institution; or

(vi) IBF time deposits meeting the requirements of § 204.8(a)(2).

(c)(1) "Time deposit" means:

(i) A deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit.[1] A time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal. If such additional early withdrawal penalties are not imposed, the account ceases to be a time deposit. The account may become a savings deposit if it meets the requirements for a saving deposit; otherwise it becomes a transaction account.[2] "Time deposit" includes funds—

(A) Payable on a specified date not less than seven days after the date of deposit;

(B) Payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) Payable only upon written notice that is actually required to be given by the depositor not less than seven days prior to withdrawal;

(D) Held in "club" accounts (such as "Christmas club" accounts and "vacation club" accounts that are not maintained as "savings deposits") that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within six days from the end of the period; or

(E) Share certificates and certificates of indebtedness issued by credit unions, and certificate accounts and notice accounts issued by savings and loan associations;

(ii) A "savings deposit;"

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[1] Accounts existing on March 31, 1986, may satisfy the early withdrawal penalties specified by this Part by meeting the Depository Institutions Deregulation Committee's early withdrawal penalties in existence on March 31, 1986. Accounts that otherwise meet the requirements for time deposits but that lack such penalties due to a lack of a regulatory requirement for such a penalty, as in the case of Federally-chartered credit unions, may continue to be classified as time deposits; however, the penalty should be included in time deposits opened, renewed or to which additional deposits are made on or after January 1, 1987.

A time deposit, or a portion thereof, may be paid before maturity without imposing the early withdrawal penalties specified by this part:

(a) Where the time deposit is maintained in an Individual Retirement Account established in accordance with 26 U.S.C. 408 and is paid within seven days after establishment of the Individual Retirement Account pursuant to 26 CFR 1.408-6(d)(4), or where it is maintained in a Keogh (H.R. 10) plan; provided that the depositor forfeits an amount at least equal to the simple interest earned on the amount withdrawn;

(b) Where the depository institution pays all or a portion of a time deposit representing funds contributed to an Individual Retirement Account or a Keogh (H.R. 10) plan established pursuant to 26 U.S.C. 408 or 26 U.S.C. 401 when the individual for whose benefit the account is maintained attains age 59½ or is disabled (as defined in 26 U.S.C. 72(m)(7)) or thereafter;

(c) Where the depository institution pays that portion of a time deposit on which federal deposit insurance has been lost as the result of the merger of two or more federally insured banks in which the depositor previously maintained separate time deposits, for a period of one year from the date of the merger;

(d) Upon the death of any owner of the time deposit funds;

(e) When the owner of the time deposit is determined to be legally incompetent by a court or other administrative body of competent jurisdiction; or

(f) Where a time deposit is withdrawn within ten days after a specified maturity date even though the deposit contract provided for automatic renewal at the maturity date.

[2] A nonpersonal time deposit with a stated maturity of one and one-half years or more may be treated as having an original maturity of one and one-half years or more for reserve requirement purposes only if it is subject to the minimum penalty described in § 204.2(f)(3).

(iii) An "IBF time deposit" meeting the requirements of § 204.8(a)(2); and

(iv) Borrowings, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by—

(A) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) Any office located outside the United States of a foreign bank;

(C) A foreign national government, or an agency or instrumentality thereof,[3] engaged principally in activities which are ordinarily performed in the United States by governmental entities;

(D) An international entity of which the United States is a member; or

(E) Any other foreign, international, or supranational entity specifically designated by the Board.[4]

(2) A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, or statement, or by book entry or otherwise.

(d)(1) "Savings deposit" means a deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. The term "savings deposit' includes a regular share account at a credit union and a regular account at a savings and loan association.

(2) The term "savings deposit" also means:

(i) A deposit or account that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the account agreement, or by practice of the depository institution, the depositor is permitted or authorized to make no more than three withdrawals per calendar month, or statement cycle (or similar period) of at least four weeks, for the purpose of transferring funds to another account of the depositor at the same institution (including a "transaction account") or for making payment to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, provided that no such withdrawals may be by check, draft or similar order (including debit card) drawn by the depositor to third persons. A "preauthorized transfer" includes any arrangement by the depositor institution to pay a third party from the account of a depository upon written or oral instruction (including an order received through an automated clearing house (ACH) or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from the account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.[5]

(ii) A deposit or account, such as an account commonly known as a "money market deposit account" ("MMDA"), that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers per calendar month or statement cycle (or similar period) of at least four weeks to another account (including a transaction account) of the depositor at the same institution or to a third party by means of the preauthorized or automatic transfer (see § 204.2(d)(2)(i)), or telephonic (including data transmission) agreement, order or instruction and no more than three of the six such transfers may be made by check, draft, debit card or similar order made by the depositor and payable to third parties. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.[6]

(3) A deposit may continue to be classified as a savings deposit even if the depository institution exercises its right to require notice of withdrawal.

(4) "Savings deposit" does not include funds deposited to the credit of the depository institution's own trust department where the funds involved are utilized to cover checks or drafts. Such funds are "transaction accounts."

(e) "Transaction account" means a deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, or other similar device for the purpose of making payments or transfers to third persons or others or from which the depositor may make third party payments at an automated teller machine ("ATM") or a remote service unit, or other electronic device, including by debit card, but the term does not include savings deposits or accounts described in § 204.2(d)(2) even though such accounts permit third party transfers. "Transaction account" includes:

(1) Demand deposits;

(2) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or

[3] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[4] The designated entities are specified in 12 CFR 217.126.

[5] In order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the definitions in § 204.2(d)(2), a depository institution must either:

(a) prevent withdrawals or transfers of funds in this account that are in excess of the limits established by § 204.2(d)(2)(i) or (ii), or

(b) adopt procedures to monitor those transfers on an *ex post* basis and contact customers who exceed the limits established by § 204.2(d)(2)(i) or (ii) on more than an occasional basis.

For customers who continue to violate those limits after being contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the account's transfer and draft capacities.

An account that authorizes withdrawals or transfers in excess of the permitted number in a transaction account regardless of whether the authorized number of transactions are actually made.

[6] See footnote 5. For accounts described in § 204.2(d)(2)(ii), the institution at its option may use on a consistent basis either the date on the check, draft or similar item or the date the item is paid in applying the limits on such items.

transfer of any funds in the account and that are subject to check, draft, negotiable order of withdrawal, share draft, or other similar item, except accounts described in § 204.2(d)(2)(ii) (MMDAs), but including accounts authorized by 12 USC 1832(a) ("NOW accounts").

(3) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer or credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such accounts, except accounts described in § 204.2(d)(2), but including accounts authorized by 12 U.S.C. 371a (automatic transfer accounts or ATS accounts).

(4) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and under the terms of which, or by practice of the depository institution, the depositor is permitted or authorized to make more than three withdrawals per month or statement cycle (or similar period) of at least four weeks for purposes of transferring funds to another account of the depositor at the same institution (including a "transaction account") or for making payment to a third party by means of preauthorized transfer, or telephonic (including data transmission) agreement, order or instruction, except accounts described in § 204.2(d)(2). An account that authorizes more than three such withdrawals in a calendar month, or statement cycle (or similar period) of at least four weeks, is a "transaction account" whether or not more than three such transfers are made during such period. A "preauthorized transfer" includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearing house (ACH)), or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.

(5) Deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others or to a deposit account of the depositor.

(6) All deposits other than time and savings deposits.

(f)(l) "Nonpersonal time deposit" means:

(i) A time deposit, including an MMDA or any other savings deposit, representing funds in which any beneficial interest is held by a depositor which is not a natural person;

(ii) A time deposit, including an MMDA or any other savings deposit, that represents funds deposited to the credit of a depositor that is not a natural person, other than a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest in the deposit is held by one or more natural persons;

* * * * *

(v) A time deposit represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by:

(A) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) Any office located outside the United States of a foreign bank;

(C) A foreign national government, or an agency or instrumentality thereof,[7] engaged principally in activities which are ordinarily performed in the United States by governmental entities;

(D) An international entity of which the United States is a member; or

(E) Any other foreign, international, or supranational entity specifically designated by the Board.[8]

* * * * *

(3) Any nonpersonal time deposit with a stated maturity or notice period of one and one-half years or more that permits any early withdrawal must be subject to a minimum early withdrawal penalty equal to at least thirty days' simple interest on the amount withdrawn for any withdrawal that occurs more than six days but within one and one-half years after the date of deposit. Any such account not subject to this minimum early withdrawal penalty will be regarded as a nonpersonal time deposit with an original maturity or notice period of from seven days to less than one and one-half years from the date of the deposit.[9]

* * * * *

§ 204.2 [Amended]

3. Section 204.2 is amended as follows:

(a) By redesignating the first footnote 1 in paragraph (h)(1)(ii)(A) as footnote 10.

(b) By redesignating the second footnote 1 in paragraph (h)(2)(ii) as footnote 11 and revising the footnote to read, "See footnote 10."

(c) By redesignating footnote 2 in paragraph (t)(1) as footnote 12.

4. Section 204.3 is amended by revising paragraphs (a)(3)(i) and (h) to read:

§ 204.3 Computation and maintenance.

(a) * * *

(3) * * * (i) In determining the reserve requirements of a depository institution, the exemption provided for in section 204.9(a) shall apply in the following order of priorities:

(A) First, to net transaction accounts that are first authorized by federal law in any state after April 1, 1980;

(B) Second, to other net transaction accounts: and

(C) Third, to nonpersonal time deposits (including MMDAs and other savings deposits) and Eurocurrency liabilities starting with those with the highest reserve ratio under § 204.2(a) and then to succeeding lower reserve ratios.

* * * * *

(h) *Carryover of Excesses or Deficiencies.* Any excess or deficiency

[7] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[8] The designated entities are specified in 12 CFR 217.126.

[9] See Footnote 1 for treatment of accounts existing on March 31, 1986 and for exceptions to the imposition of the early withdrawal penalties imposed by this Part. The penalty required by this § 204.2(f)(3) and that required by § 204.2(c)(1) need not be aggregated.

in a required reserve balance for any maintenance period that does not exceed the greater of two percent of the institution's required reserves (including required clearing balances and net of the required clearing balance penalty free band where applicable) or $25,000, shall be carried forward to the next maintenance period. Any carryover not offset during the next period may not be carried forward to subsequent periods.

* * * * *

§204.4 [Amended]

5. Section 204.4 is amended as follows:

a. By amending the last sentence of paragraph (a) by removing the language after "1980" and replacing it with a period.

b. By removing paragraphs (b) and (c).

c. By redesignating paragraph (d) as paragraph (b) and removing the phrase "or (c), as applicable,".

d. By redesignating paragraph (e) as paragraph (c) and in new paragraph (c)(2)(ii) replacing "eight" with "seventeen".

e. By redesignating paragraph (f) as paragraph (d) and by removing from new paragraph (d)(2) the language", including deposits or accounts issued pursuant to 12 CFR 1204.122,".

f. By redesignating paragraph (g) as paragraph (e) and changing the references in paragraphs (e)(1) and (2) from "(a) through (f)" to "(a) through (d)" and the reference in paragraph (e)(2)(iii) from "(g)" to "(e)".

§ 204.8 [Amended]

6. Section 204.8 is amended as follows:

a. revising paragraph (a)(2)(i)(B)(5) to read: A foreign national government, or an agency or instrumentality thereof,[13] engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board;[14] or

b. By revising paragraph (a)(3)(v) to read: A foreign national government, or an agency or instrumentality thereof,[15] engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board;[16] or

c. By amending paragraph (e) by removing the phrase "and to interest payment limitations that may be applicable under Regulation Q (12 CFR Part 217) on its IBF time deposits,".

By order of the Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

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[13] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[14] The designated entities are specified in 12 CFR 217.126.

[15] See footnote 13.

[16] See footnote 14.

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12 CFR Part 217

[Reg. Q; Docket No. R-0566]

Interest on Deposits; Definition of Deposit and Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board is adopting a final rule amending 12 CFR Part 217 (Regulation Q—Interest on Deposits). Concurrently, the Board is amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions). The amendments are being adopted after consideration of public comment on proposed amendments to Regulation Q (51 FR 31) and Regulation D (51 FR 27).

The amendments are due to the expiration on March 31, 1986, of the statutory authority to set interest rate ceilings on time and savings deposits and to prescribe rules regarding early withdrawals from time deposits. All regulations of the Board issued under this authority and all regulations of the Depository Institutions Deregulation Committee ("DIDC") also expire on that date.

These amendments rely on the definitions of "deposit" and "demand deposit" in the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) for the purposes of Regulation Q. The amendments eliminate the sections of Regulation Q that govern withdrawals from time deposits and savings deposits, set early withdrawal penalties, and establish account characteristics and interest rate ceilings. Rules regarding early withdrawal penalties for reserve requirement purposes (rather than for enforcement of interest rate limitations) and definitions of the various categories of "deposit" now appear in Regulation D.

This final rule does not address advertising of deposits by member banks (§ 217.6 of Regulation Q) which the Board also published for comment (51 FR 1379) and which will be adopted at a later date.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), or Patrick J. McDivitt, Attorney, (202/452-3818), Legal Division, or Ernestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a), gives the Board the authority to issue rules defining terms used in section 19 in order to prevent evasions of that section. Section 19(i) of that Act (12 U.S.C. 371a) prohibits the payment of interest on a demand deposit by a member bank, and section 19(j) of that Act (12 U.S.C. 371b) gives the Board authority to issue rules governing the payment and advertising of interest on deposits.[1] Pursuant to this authority, the Board promulgated its current Regulation Q which regulates the payment of interest on deposits.

The Board's authority under section 19(j) to issue rules governing the payment of interest on deposits, other than demand deposits, and the comparable authority of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board expire with the expiration of the Depository Institutions Deregulation Act of 1980 at the end of March 31, 1986.

The expiration of the rules of the DIDC and of the authorities transferred to the DIDC at the end of March 31, 1986, will not affect section 19(i) of the Federal Reserve Act which prohibits a member bank from paying interest on a demand deposit. Nor will these expirations affect the authority of member banks to offer accounts that permit automatic transfers to checking accounts ("ATS accounts") as authorized by the last sentence of section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) or to offer accounts subject to negotiable orders of

[1] The current advertising rule is codified in Regulation Q at 12 CFR 217.6—Advertising of Interest on Deposits. In a separate rulemaking proceeding, the Board requested comment on proposed revisions to its rules on member bank advertising of interest on deposits (51 FR 1379). The comment period for the separate rulemaking on advertising closed on March 6, 1986.

withdrawal ("NOW accounts") as authorized by section 2(a) of Pub. L. 93-100 (12 U.S.C. 1832(a)).

The amendments being adopted by the Board revise §§ 217.1-217.5 and 217.7 of Regulation Q by removing the rules relating to penalties for early withdrawals from time deposits (section 217.4) and the interest rate ceilings and account characteristics for time and savings deposits (primarily § 217.7).[2]

In order to prevent savings deposits from being used to evade the prohibition against the payment of interest on "demand deposits," the Board in the past prescribed rules regarding withdrawals from savings deposits. The Board is retaining the substance of these provisions but has incorporated them into Regulation D. Consequently, the rules governing withdrawals from savings deposits, currently contained in § 217.5, are unnecessary and are being rescinded.

The revised definition of "demand deposit" in Regulation D, which is being incorporated by reference in Regulation Q, defines the accounts subject to the prohibition against the payment of interest on demand deposits. Under the revised definition, the term "demand deposit" excludes NOW accounts and ATS accounts as well as ordinary savings deposits and money market deposit accounts ("MMDAs") if the applicable transfer limitations are adhered to. If the depositor is authorized to exceed the transfer limitations applicable to savings deposits and MMDAs, however, such accounts would be "transaction accounts" for the purpose of Regulation D but would not be "demand deposits" for the interest payment prohibition purposes of Regulation Q if the depositor is eligible to hold another type of account, such as a NOW account or an ATS account, that would permit the particular excess transfers. For other depositors, savings deposits and MMDAs authorized to exceed the withdrawal or transfer limitations would be considered to be demand deposits on which interest could not be paid.

The definition of "savings deposit" is also deleted from Regulation Q, and an amended definition of that term is contained in Regulation D. The Regulation D definition also removes the $150,000 limitation on business savings accounts but treats a business telephone transfer account authorizing more than three telephone transfers per month as "demand deposit."

The Board's rules regarding the payment of interest are also set forth in various Board interpretations and policy statements and in staff opinions and rulings. These amendments render many of these interpretations, policy statements, and staff opinions unnecessary, and the Board will be revising these positions accordingly. Unless a contrary intent is evidenced in the revised Regulations D and Q, until the technical revisions are promulgated, member banks may continue to rely upon existing interpretations and policies concerning the exceptions from early withdrawal penalties, the use of premiums, the payment of interest after maturity of a deposit, and the grace period for withdrawals without penalty from an automatically renewable time deposit after a rollover or maturity date. Further, certain disclosure requirements currently found in the related or revised sections of the current Regulation Q are retained in a new § 217.4.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, it is the Board's view that the amendments will not impose any additional reporting or recordkeeping requirements. The purpose of this rule is to simplify Regulation Q and to remove obsolete terms and conditions that affect the payment of interest on deposits. The rule applies to banks that are members of the Federal Reserve System. It is anticipated that this rule will have little or no adverse effect on the ability of small depository institutions to attract deposits.

This rule removes existing regulatory provisions, the authority for which expires on March 31, 1986 and amends provisions to preserve current requirements in light of the expiration of other requirements. Consequently, the Board finds good cause for implementing this rule on April 1, 1986, which is within thirty days after the date of publication.

List of Subjects in 12 CFR Part 217

Banks, banking, Federal Reserve System, Interest on deposits.

Pursuant to its authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 et seq., 371a and 371b), the Board is amending Part 217 as follows:

PART 217—[AMENDED]

1. The Authority citation for 12 CFR Part 217 is revised to read.

Authority: 12 U.S.C. 248, 371, 371a, 371b, 461, 1828, and 3105, unless otherwise noted.

§§ 217.3, 217.4, 217.5, and 217.7 [Removed]

2. Current §§ 217.3, 217.4, 217.5, and 217.7 of this Part are removed.

3. Current §§ 217.0 through 217.2 are redesignated as §§ 217.1 through 217.3 and are revised to read:

§ 217.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued under the authority of section 19 of the Federal Reserve Act (12 U.S.C. 371, 371a, 371b, 461), section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), and section 11 of the Federal Reserve Act (12 U.S.C. 248), unless otherwise noted.

(b) *Purpose.* This regulation prohibits the payment of interest on demand deposits by member banks and other depository institutions within the scope of this regulation and sets forth requirements concerning the advertisement of interest on deposits by member banks and these other institutions.

(c) *Scope.* (1) This regulation applies to state chartered banks that are members of the Federal Reserve under section 9 of the Federal Reserve Act (12 U.S.C. 321, et seq.) and to all national banks. The regulation also applies to any Federal branch or agency of a foreign bank and to a State uninsured branch or agency of a foreign bank in the same manner and to the same extent as if the branch or agency were a member bank, except as may be otherwise provided by the Board, if:

(i) Its parent foreign bank has total worldwide consolidated bank assets in excess of $1 billion;

(ii) Its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion; or

(iii) Its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion.

(2) For deposits held by a member bank or a foreign bank, this regulation does not apply to "any deposit that is payable only at an office located outside of the United States" (*i.e.*, the States of the United States and the District of Columbia) as defined in § 204.2(t) of the Board's Regulation D— Reserve Requirements of Depository Institutions (12 CFR Part 20.4).

[2] Section 217.4 of this final rule retains the current requirement that a member bank disclose to the customer the effect of any early withdrawal penalty. That section also retains the current requirement that interest cannot be paid after a maturity date unless the contract provides otherwise.

§ 217.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified;

(a) "Demand deposit" means any deposit that is considered to be a "demand deposit" under § 204.2(b) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(b) "Deposit" means any liability of a member bank that is considered to be a "deposit" under § 204.2(a) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(c) "Foreign bank" means any bank that is considered to be a "foreign bank" under § 204.2(o) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(d) "Interest" means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A member bank's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not considered a payment of interest.

§ 217.3 Interest on demand deposits.

No member bank of the Federal Reserve System shall, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit.[1]

4. A new § 217.4 is added as follows:

§ 217.4 Miscellaneous.

(a) *Early withdrawal penalty.* At the time a depositor enters into a time deposit contract with a member bank, the bank shall provide a written statement of the effect of any early withdrawal penalty which shall (1) state clearly that the customer has contracted to keep the funds on deposit for the stated maturity, and (2) describe fully and clearly how such penalty provisions apply to time deposits in such bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. Such statement shall be expressly called to the attention of the customer.

(b) *Payment of interest.* On each automatically renewable certificate, passbook, or other document representing a time deposit, the bank shall have printed or stamped a conspicuous statement indicating that the contract will be renewed automatically upon maturity and indicating the terms of such renewal.

By order of the Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-6142 Filed 3-19-86; 8:45 am]

BILLING CODE 6210-01-M

[1] A member bank may continue to pay interest on a time deposit for not more than ten calendar days: (1) Where the member bank has provided in the time deposit contract that, if the deposit or any portion thereof is withdrawn not more than ten calendar days after a maturity date (one business day for "IBF time deposits" as defined in § 204.8(a)(2) of Regulation D), interest will continue to be paid for such period; or (2) for a period between a maturity date and the date of renewal of the deposit, provided that such certificate is renewed within ten calendar days after maturity.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 352

Nondiscrimination on the Basis of Handicap

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This final regulation, which implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, defines the scope of the FDIC's obligation to ensure that, to the extent practicable, handicapped persons are provided with equal access to FDIC programs and activities.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Ann Marie Kohlligian, Attorrney, Legal Division (202/898-3711) or Thomas W. Louden, Jr., Assistant to the Associate Director, Division of Accounting and Corporate Service (202/298-3615), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: This regulation implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by various agencies. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, it has voluntarily chosen to promulgate this regulation pursuant to section 504.

On April 18, 1985 the FDIC published a Notice of Proposed Rulemaking ("NPRM") pursuant to its policy of voluntary compliance. The prohibitions against discrimination on the basis of handicap contained in the proposed regulation applied only to those FDIC programs or activities which are available to members of the general public. The proposed regulations also stated that the FDIC did not have to take any action to accommodate handicapped persons if such action would result in a fundamental alteration in the nature of the program or activity or in undue financial or administrative costs. The deadline for receiving comments on the proposed regulation was set for June 18, 1985. Five comments were received in response to the notice, two from organizations representing handicapped persons and three from other federal agencies, including the Department of Justice and the Equal Employment Opportunity Commission ("EEOC").

In general, the commenters objected to the limitation of the application of the proposed regulation to only those programs and activities in which the general public participates and to the use of the fundamental alteration and/or undue burdens defenses in areas which they argued are inappropriate, such as in the definition of qualified handicapped person or with respect to program accessibility in cases of new construction. The FDIC has discussed all the comments with the Justice Department and the EEOC. A complete analysis of these comments and of the changes made to the proposed regulation is provided below.

Section-by-Section Analysis and Response to Comments

Section 352.1 Purpose.

This section, as proposed, described the general purpose of the regulation and there is no change from the proposed regulation.

Section 352.2 Application.

In the proposed regulation, this section stated that Part 352 applies to those FDIC programs and activities which are available to members of the general public. The section has been modified in response to the comments received and now states that this rule applies to all activities and programs conducted by the FDIC. Since this rule will most likely apply to the programs and activities which are open to members of the general public, the final regulation retains the list of such programs and activities that was contained in the proposed rule to provide notice to interested persons. Also, in response to commenters, the FDIC has added a paragraph (b) which specifically states that FDIC personnel will comply with this part in their interaction with employees of insured

banks and other state or federal agencies during the discharge of their official FDIC duties. This paragraph is not intended to reach the activities of the banks themselves merely because they are regulated or insured by the FDIC. *See, Community Television of Southern California* v. *Gottfried,* 459 U.S. 498 (1983).

One commenter noted that references to employment in this section could result in confusion as to which standard governs employment—those set forth in the proposed regulation or those in section 501 of the Rehabilitation Act and at 29 CFR Part 1613. The FDIC agrees and, therefore, paragraph (c) has been added to make it clear that employment and application for employment are "programs and activities" of the FDIC but are governed by the standards set forth in section 501 of the Rehabilitation Act and at 29 CFR Part 1613 as expressly provided in § 352.6 of the final rule.

Another commenter noted that the proposed regulation mentioned "FDIC-assisted programs" and pointed out that the FDIC does not administer any federal financial assistance programs. The FDIC concurs with this comment and, therefore, all references to "FDIC-assisted programs" have been deleted from the final rule. The same commenter criticized the proposed regulation for stating that the programs and activities enumerated in this section "constitute the programs and activities of the FDIC governed by this regulation." This commenter argued that such a statement implies that the FDIC conducts other programs and activities which it is unlawfully excluding from the nondiscrimination requirements of section 504. The FDIC does not intend that Part 352 be read in such a narrow fashion and has modified paragraph (a) accordingly.

Section 352.3(a) Definition of "auxiliary aids."

The proposed definition of "auxiliary aids" stated that this term means services or devices that enable persons with impaired sensory, manual or speaking skills to participate in or enjoy the benefits of FDIC programs or activities. Two commenters suggested that the FDIC add to the definition of "auxiliary aids" examples of what such aids may include. Since primary consideration will be given to any reasonable requests of handicapped persons in determining what type of auxiliary aid is required by § 352.9(a)(1)(i), the FDIC believes that such an expansive definition of "auxiliary aid" is unnecessary.

One commenter recommended that the term "aids for reasonable accommodation" be used instead of "auxiliary aids" as the term to be defined because the latter term implies something that is extra or discretionary. This suggestion has not been adopted. The FDIC believes that the term "auxiliary aids" adequately indicates what is intended and what is required. Moreover, the term "reasonable accommodation" is a term of art applicable only to discrimination in employment under section 501 of the Rehabilitation Act. The use of this term in Part 352 would be inappropriate and confusing since Part 352 covers more than employment programs and activities.

A further suggestion by the same commenter called for the expansion of the definition to encompass services or devices for persons who have "auditory, visual and physical impairments" and include attendant services for such persons. The proposed definition of "auxiliary aids" takes into account services or devices to aid persons with "impaired sensory, manual or speaking skills." The FDIC believes that this coverage adequately addresses the auditory, physical and visual impairments that are pertinent to § 352.9 (Communications), where the term "auxiliary aids" is used. Therefore, no change has been made in this regard. The FDIC has also declined to incorporate attendant services in the definition of "auxiliary aids." Such services are generally personal in nature and thus are properly outside the scope of "auxiliary aids," as indicated by the Justice Department in the preamble to its final rule under section 504. *See* 49 *F.R.* 35724, 35732 (1984). Nevertheless, to the extent that attendant services are not personal in nature and are directly related to a program or activity listed in § 352.2, such services may be provided when necessary for FDIC purposes under the final version of § 352.9(a)(1)(ii).

Section 352.3(b) Definition of "complete complaint."

"Complete complaint" in the proposed regulation was defined to mean a written statement with sufficient detail about an alleged violation of Part 352 to enable the FDIC to determine the beginning of its obligation to investigate a complaint. In response to a suggestion by one commenter, a sentence has been added to the definition of "complete complaint" requiring that complaints filed on behalf of classes or third parties describe or identify by name, if possible, the alleged victims of discrimination. The definition has also been clarified to indicate that it does not apply to complaints regarding allegations of discrimination on the basis of handicap in employment, which is governed only by the standards set forth in § 352.6 of this part.

Section 352.3(c) Definition of "facility."

The proposed regulation defined "facility" to mean buildings and other real estate which must be accessible to ensure participation in FDIC-conducted programs or activities. One commenter stated that the definition should include all programs and activities conducted by the FDIC regardless of whether the facility in which they are conducted is owned, leased or used on some other basis by the agency. The proposed definition of "facility" is consistent with this recommendation and therefore has not been changed. Another commenter noted that the definition was limited by the phrase, "which must be accessible to ensure participation." The commenter stated that the limitation should be in § 352.7 where the term is used rather than in the definition. The FDIC agrees with this commenter and has deleted the qualification from the definition. The same commenter suggested that personal property, such as furniture and similar fixtures, be added to the definition of facility because not all problems concerning accessibility involve real estate. The FDIC agrees and has included personal property in the definition of "facility." Personal property is further defined in this regulation to mean only furniture, carpeting, and the like, and does not include items of a personal nature.

Section 352.3(e) Definition of "qualified handicapped person."

In the proposed regulation, "qualified handicapped person" was defined to mean a handicapped person who meets the essential eligibility requirements of a program or activity and whose participation would not result in fundamental alteration in the nature of the program or activity or in undue financial or administrative burdens. The FDIC received criticism over the proposed rule's definition of "qualified handicapped person" from three commenters. All three argued that the FDIC has the burden of proving that a handicapped person is not a "qualified handicapped person" for purposes of section 504. The commenters cite no authority for this proposition and, in fact, the case law does not support their contention. *See, Plummer by Plummer* v. *Brandstand,* 731 F.2d 574 (8th Cir. 1984); *Doe* v. *New York University,* 666 F. 2d

761 (2d Cir. 1981); *Pushkin* v. *Regents of University of Colorado*, 658 F.2d 1372 (10th Cir. 1981).

Instead of adopting the suggested language, the FDIC has revised § 352.3(e) to make it clear that the question as to whether a handicapped person is a "qualified handicapped person" is to be determined by the FDIC on the basis of a written record. By requiring that such determinations be based on a written record, the final version of § 352.3(e) facilitates both the FDIC's decision on this issue and any subsequent judicial review of FDIC determinations.

The FDIC has also revised this section, as discussed in § 352.2, in order to eliminate the possibility of confusion regarding the applicable standards for matters involving employment. The language, "such as employment" and "perform the tasks required by the position," has been removed and a new paragraph (3) has been added which makes clear that "qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 352.6. Nothing in this part changes existing regulations applicable to employment. The FDIC has not adopted the suggestion of one commenter that the term "reasonable accommodation" be included in the definition of "qualified handicapped person." This would result in the possibility of needless confusion since "reasonable accommodation" is a term of art used exclusively in the employment context.

Two commenters recommended eliminating from the definition of "qualified handicapped person" the requirement that the person's participation must not cause a fundamental alteration to the program or activity or undue financial and administrative burdens. They argued that any handicapped person who meets the essential eligibility requirements for the program or activity in question as set forth in the definition is a qualified handicapped person and that the "fundamental alteration" and "undue financial and administrative burdens" limitations are to be considered only in determining the extent to which the qualified handicapped person must be accommodated. These commenters support their position by noting that the United States Supreme Court has upheld the validity of regulations promulgated by the Department of Health, Education and Welfare ("HEW") (now Department of Health and Human Services ("HHS")), 45 CFR 84.3(k), in which HHS defines "qualified handicapped person" without reference to fundamental alterations or undue burdens. *See, Consolidated Rail Corporation* v. *Darrone*, 104 S. Ct. 1248 (1984). A third commenter did not criticize the use of the fundamental alteration limitation in the definition of "qualified handicapped person," but did recommend that the undue burdens exception be eliminated.

The FDIC believes that the standard to be applied is set forth in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), where the United States Supreme Court analyzed the term "qualified handicapped person" for the purposes of section 504. The FDIC construes the Court's language in *Davis* to mean that a handicapped person is a "qualified handicapped person" when he or she can meet the essential eligibility requirements of the program or activity in question without requiring a fundamental alteration in the nature of the program or activity. Although in *Consolidated Rail Corp. v. Darrone* and *Alexander v. Choate*, 105 S. Ct. 712 (1985), the Supreme Court upheld the validity of the aforementioned HHS regulations, neither case challenges or modifies *Davis*. In accord with *Davis*, the FDIC recognizes that compliance with section 504 may require affirmative efforts to accommodate handicapped persons. The definition of "qualified handicapped persons" in § 352.3(e) simply restates the rule, set forth in *Davis* and subsequent cases, that the obligation to accommodate handicapped persons is not without limit.

While the Court's language in *Davis* includes the fundamental alteration limitation in the definition of "qualified handicapped person," it does not appear to incorporate the undue financial and administrative burdens limitation. Accordingly, the FDIC has deleted the undue burden limitation from § 352.3(e).

The FDIC agrees with the recommendation of one commenter to delete the fundamental alteration limitation from the definition of qualified handicapped persons in subparagraph (2), which concerns programs and activities in which handicapped persons are not required to perform services or achieve a level of accomplishment in order to participate. Since *Davis* states that a handicapped person is a "qualified handicapped person" except where participation in a program or activity requires participants to perform services or achieve a level of accomplishment, the fundamental alteration limitation has no bearing on the definition of "qualified handicapped person" in reference to programs or activities governed by subparagraph (2).

Finally, one commenter criticized the use of the phase, "level of achievement [sic accomplishment]," in the definition of "qualified handicapped person" as being inconsistent with HHS regulations. Contrary to the view expressed by this commenter, the use of this term is consistent with section 504 and the HHS regulations. As explained in *Davis*, the HHS regulations reinforce the conclusion that the language "otherwise qualified handicapped person" in section 504 means a person who, despite his or her handicap, is able to meet all of a program's requirements, i.e., attain a certain level of achievement. 442 U.S. at 406.

Section 352.3(f) Definition of "section 504."

Paragraph (f) in the proposed rule contained the definition of "reasonable accommodation." The use of the term "reasonable accommodation" was criticized by several commenters because the term is used with respect to employment matters and may involve different standards than those called for by section 504 in connection with the range of services or other benefits covered by this regulation. To eliminate the possibility that there might be confusion over the two standards, the proposed "reasonable accommodation" difinition for § 352.3(f) has been deleted and the reference to the term in § 352.5 has been eliminated from this part for the same reason. The final version of § 352.3(f) contains what was formerly § 352.3(g) in the proposed regulations.

Section 352.4 Self-evaluation.

This section, as proposed, stated that the FDIC will conduct an evaluation of its program to implement Part 352. The procedures for the self-evaluation have been revised to reflect some of the suggestions made by two commenters. The final version calls for the FDIC to make available to the public for a period of three years after the self-evaluation a description of areas examined, problems identified, and modifications made. The FDIC has also clarified the procedures to be used by persons interested in participating in the self-evaluation process by specifying that handicapped persons and persons representing such individuals may participate through the submission of written comments.

The FDIC has declined to adopt additional provisions recommended by one commenter which would require: (1) That an assurance be submitted with the self-evaluation which would pledge that the effects of any discriminatory policy be eliminated; (2) the submission of a transition plan for compliance; and (3) specific modification requirements. The FDIC does not find these additional

provisions to be necessary in order to carry out the spirit of section 504.

Section 352.5 General requirements.

This section in the proposed rule contained the general principles of nondiscrimination which serve as the foundation for the remaining sections of the regulation. Three commenters suggested that the FDIC revise this section to incorporate the very detailed language contained in the prototype section 504 regulation developed by the Department of Justice. In drafting the proposed rule, the FDIC did not adopt many of the provisions in the prototype regulation for several reasons. First, many of the specific prohibitions against discriminatory treatment discussed in the prototype have no application to FDIC-conducted programs and activities and their inclusion in this section is, therefore, unnecessary. Secondly, the proposed regulation adequately covers those situations in which issues of discrimination against qualified handicapped persons might arise. As was stated in the preamble to the proposed rule, 50 FR 15453, this section provides the "general principles which serve as the analytical foundation for the remaining sections of the regulation." *Id.* at 15454. The preamble goes on to say that when no provision in any of the subsequent, more specific, sections apply to a particular alleged discriminatory act by the FDIC, "the general prohibition in this section would apply." *Id.* The FDIC believes that the final rule as proposed provides adequate notice to both the FDIC and potential victims of discrimination of the FDIC's obligation under Part 352.

The FDIC has modified paragraph (b) to make it clear that the term "equal opportunity" means "equal opportunity to benefit from or to reach the same level of achievement from [FDIC-conducted programs and activities] as that provided to non-handicapped persons." Further, the FDIC has adopted a suggestion from one commenter by adding a paragraph (c) which obligates the Corporation to give priority to those methods of administering programs or activities which will not segregate participation by qualified handicapped persons in FDIC-conducted programs from that by non-handicapped persons.

Another commenter suggested that the FDIC revise this section to provide that the FDIC will not aid or perpetuate discrimination against a qualified handicapped person by another agency, organization, or person by providing significant assistance to such other agency, organization, or person that discriminates. The commenter noted that several federal agencies are not required to promulgate regulations under section 504 of the Rehabilitation Act and explained that such a revision would allow a person who has been discriminated against by another agency, organization, or person to file a complaint with the FDIC regarding the discriminatory actions of such parties if the FDIC has provided assistance to them. While the language recommended by this commenter may be applicable to programs receiving federal financial assistance, it does not apply to the FDIC because the FDIC does not conduct such programs. Furthermore, courts have held that a federal agency having supervisory or regulatory authority over a private entity does not have authority to enforce section 504 against such entity absent a clear grant of statutory authority to do so, *see, Community Television of Southern California v. Gottfried,* and the FDIC has no clear grant of statutory authority to enforce section 504 against the banks it regulates.

Section 352.6 Employment.

In the proposed regulation, this section states that no qualified handicapped person shall be subjected to discrimination in employment and that all matters concerning employment shall be governed by standards in section 501 of the Rehabilitation Act and 29 CFR Part 1613. No changes have been made in § 352.6.

Section 352.7 Program accessibility: Existing facilities.

This section, as proposed, contained the standards by which the FDIC will make its programs and activities accessible to and usable by qualified handicapped persons in existing facilities. It stated that ensuring program accessibility does not necessarily require that the FDIC make each of its existing facilities accessible or take any action which would result in the fundamental alteration in the nature of the program or activity or in undue financial or administrative burdens. Two commenters pointed out that the proposed rule defined the "undue burdens" limitation as one of excessive financial *or* adminstrative costs and that the Supreme Court in *Davis* spoke in terms of excessive financial *and* administrative burdens. 442 U.S. at 412. The FDIC acknowledges that the *Davis* Court used the conjunctive term and has, therefore, made the requisite change in this and subsequent sections where this phrase appears.

The Supreme Court in *Davis* was far from clear in specifying what constitutes an "undue burden." The Court spoke in terms of excessive financial *and* administrative costs, but subsequent decisions have not given equal weight to each factor and have focused on the total impact a requested modification would have on the program or activity in question. *See, e.g., Alexander v. Choate, supra; Dopico v. Goldschmidt,* 518 F. Supp. 1161 (S.D.N.Y. 1981), *rev'd on other grounds,* 687 F.2d 644 (2d Cir. 1982); *American Public Transit Ass'n v. Lewis,* 655 F.2d 1272 (D.C. Cir. 1981). The existence of financial or administrative costs alone, therefore, will not preclude a finding that a proposed modification is" undue" since either, if excessive, could have substantial repercussions on the FDIC's capacity to meet its primary regulatory obligations.

Two commenters were critical of the use of the limiting phrase, "undue financial [and] administrative burdens," in this section on the ground that its repeated use in the regulation constitutes an unjustified, additional limitation on the responsibility of the FDIC for accommodating qualified handicapped persons. As previously explained above, the FDIC is not obligated to make changes in existing facilities which impose undue burdens. The commenters also contended that the phrase is overly broad and, therefore, offers little guidance. Since every instance in which this issue may arise presents differing factual circumstances, the regulations cannot be formulated to provide any more detail than is contained in the proposed rule. This section has been modified, however, to require that all determinations regarding undue burdens, as well as those concerning fundamental alterations in the nature of the program or activity, be made on the basis of a written record in order to guarantee objective and substantiated decision-making. This change also responds to the recommendation of three commenters that the rule be revised to require explicitly that all agency resources be considered in determining whether or not a modification should be made.

Another commenter expressed concern over the FDIC's use of the term "feasible actions" in paragraph (a)(2) with respect to the efforts the FDIC would undertake to ensure that qualified handicapped persons receive the benefits and services of a program or activity. The commenter contended that the term implied a standard lower than that required by the fundamental alteration or undue burdens limitations. The FDIC did not intend that the term be read to imply a lower standard and has decided to delete it from the final rule in order to avoid any unnecessary confusion. The time period for compliance with this part (except where

structural changes in facilities are undertaken) that is contained in paragraph (b) was extended from sixty to ninety days to ensure that the FDIC will be able to implement its program within the time frame established by this rule.

One commenter recommended that the FDIC include provisons which reaffirm the Corporation's commitment to provide accesible facilities and the most appropriate integrated setting for the programs and activities as is possible. Since the suggested language only reiterates what is explicity stated in § 352.5, its inclusion here is unnecessary. Two commenters also recommended that the FDIC include a provision to indicate that, in carrying out this section, the FDIC will comply with section 106 of the National Historic Preservation Act, the regulations at 36 CFR Part 800 and the supplementary guidance for handicapped access to historic places at 45 FR 9757 (1980) and the Architectural Barriers Act of 1968, as amended, and the regulations at 41 CFR Part 101–19. Since the requirements of these two Acts stand independently of section 504, the FDIC has determined that Part 352 need not reference these Acts and has, therefore, declined to adopt this suggestion.

Section 352.8 Program accessibility: New construction and alterations.

As proposed, this section stated that the FDIC need only make new construction or substantial alterations accessible if to do so would not result in a fundamental alteration or in an undue burden. This section has been revised to incorporate the observation of a commenter that the fundamental alteration and undue burdens exceptions should not apply in cases of new construction and substantial alterations. The FDIC agrees with the underlying premise that the fundamental alteration or undue burden limitation is not likely to arise in cases of new construction or substantial alterations. The recommendations concerning the National Historic Preservation Act and the Architectural Barriers Act made for § 352.7 were also made in reference to this section. For the reason discussed in § 352.7, no change has been made to § 352.8 to incorporate this suggestion.

Section 352.9 Communications.

This section in the proposed regulation contained the standards by which the FDIC will ensure effective communication with participants in its programs and activities. In response to the recommendation of one commenter, the FDIC has changed paragraph (a)(1)(i) of the proposed rule to indicate that it will give primary consideration to any reasonable requests of handicapped persons in determining what type of auxiliary aid is necessary. The FDIC has clarified § 352.9(a)(1)(ii) to state that it need not provide individually prescribed devices or other devices of a personal nature such as hearing aids or eyeglasses. If sign interpreters or special readers are needed, the FDIC may require that it be given reasonable prior notice of the need for an interpreter or reader.

One commenter stated that proposed subparagraph (a)(2) was ambiguous because it could be construed as establishing a special FDIC obligation for persons with hearing impairments, regardless of whether the FDIC provides comparable communications to others. The FDIC agrees and, accordingly, the revised subparagraph indicates that the FDIC will use telecommunications devices for deaf persons ("TDD's") or similar devices to communicate with hearing impaired participants and beneficiaries only when it communicates by telephone with persons who do not have such impairments.

Another commenter expressed concern that the inclusion of the word "applicants" in §352.9(a) might confuse the fact that employment and application for employment are covered only by the standards set forth in section 501 of the Rehabilitation Act and at 29 CFR Part 1613. The FDIC agrees and the term "applicants" has been deleted from the final version of § 352.9. It was also noted that the proposed rule provided that information about accessible facilities is only to be available at the primary entrance of accessible facilities. The FDIC has modified this so that such information will be available at inaccessible facilities to direct handicapped persons who arrive at such facilities as to where they should go to obtain services. Should persons require additional information, paragraph (b) indicates how they may obtain such information. Information will be provided at inaccessible entrances of accessible facilities to direct handicapped persons to the accessible entrances.

In response to a recommendation that this section be revised to make it clear that the FDIC has the burden of proving "fundamental alterations" and "undue financial or administrative burdens," the FDIC has made a change in the new paragraph (d) of this section that is identical to those made in §§ 352.3(e) and 352.7 and explained previously in connection with § 352.3(e). Likewise, for the reasons set forth in regard to § 352.7, this paragraph retains the "fundamental alteration" and "undue burdens" language, but reflects the changes made in other sections that the latter term is properly phrased as undue financial *and* administrative costs. The term "feasible," which was contained in paragraph (e) of the proposed rule, has been deleted to avoid confusion as to the nature of the FDIC's obligation to ensure effective communication.

Finally, in view of the new notice provision in § 352.11, paragraph (d) of proposed § 352.9 is redundant and has been eliminated from the final regulation. Paragraph (e) of the proposed regulation is now paragraph (d) of the final version.

Section 352.10 Compliance procedures.

The proposed section outlined the procedures by which complaints about discrimination on the basis of handicap will be processed by the FDIC. One commenter recommended expanding the compliance section to include: (1) A provision for obtaining the expertise of the Architectural and Transportation Barriers Compliance Board ("ATBCB") to help resolve deficiencies in the construction or location of facilities; (2) a provision for judicial review; (3) a provision to ensure that all other regulations, forms and directives issued by the FDIC are superseded by the nondiscrimination requirement of this regulation; (4) a provision for the availability of attorneys fees in administrative proceedings; and (5) a provision for the availability of compensation to the prevailing party in such proceedings. Another commenter recommended that the FDIC notify the ATBCB of any complaint alleging that a FDIC facility is not readily accessible to and usable by handicapped persons in order to assist the Board in carrying out its statutory responsibilities. These suggestions are not called for by section 504 of the Rehabilitation Act and, therefore, have not been adopted in the final version of this section.

Paragraph (c) has been modified to incorporate a suggestion from one commenter that the FDIC state the official to whom persons who allege discriminatory treatment on the basis of handicap in FDIC programs or activities should submit their complaints. The final rule states that the FDIC's Office of Equal Employment Opportunity is responsible for implementing the compliance procedure and directs that all such complaints be submitted to this office.

A new paragraph (j) has been added which allows the time frames for complaint investigations and appeals to

be extended in an individual case by the Chairman of the FDIC or the Chairman's designee for good cause based on the particular circumstances of that case. Paragraph (j) of the proposed regulation is now paragraph (k) of the final version.

Section 352.11 Notice.

In response to the suggestions of two commenters a notice provision has been added to the final regulation. This new provision resembles, almost verbatim, equivalent sections in the final rules promulgated by the Justice Department and by the Federal Reserve Board. It states that the FDIC will provide all interested persons with information regarding this part in a manner which will apprise such persons of the protections assured them by this regulation.

Other Matters

Regulatory Flexibility Act statement. This rule applies to all programs and activities conducted by the FDIC but does not reach the activities of the banks regulated and/or insured by the FDIC. On this basis, and in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board of Directors certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act statement. This rule neither alters any existing nor creates any new recordkeeping or reporting requirements. Therefore, the Paperwork Reduction Act is inapplicable.

List of Subjects in 12 CFR Part 352

Blind, Civil rights, Equal employment opportunity, Federal building and facilities, Handicapped.

In consideration of the foregoing, the FDIC hereby adds Part 352 of title 12 of the Code of Federal Regulations as follows:

PART 352—NONDISCRIMINATION ON THE BASIS OF HANDICAP

Sec.

352.1 Purpose.
352.2 Application.
352.3 Definitions.
352.4 Self-evaluation.
352.5 General requirements.
352.6 Employment.
352.7 Program accessibility: Existing facilities.
352.8 Program accessibility: New construction and alterations.
352.9 Communications.
352.10 Compliance procedures.
352.11 Notice.

Authority: 12 U.S.C. 1819.

§ 352.1 Purpose.

The purpose of this part is to implement the spirit of section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by various Executive agencies. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, it has chosen to promulgate this final regulation to ensure that, to the extent practicable, handicapped persons are provided with equal access to FDIC programs and activities.

§ 352.2 Application.

(a) This part applies to all programs and activities conducted by the FDIC. The following programs and activities involve the direct provision of benefits and services to, or participation by, members of the public:

(1) Attending Board of Directors meetings open to the public and all other public meetings;

(2) Making inquiries or filing complaints at the FDIC Office of Congressional Relations and Corporate Communications;

(3) Using the FDIC library in Washington, DC;

(4) Visiting an insured bank at which they conducted business (or an alternative liquidation site selected by the FDIC) and which has become insolvent, or been purchased by another bank under FDIC supervision, for the purpose of:

(i) Collecting FDIC checks for the insured amount of their deposits previously held in such bank; and/or

(ii) Discussing with FDIC representatives matters related to the repayment of debts which they previously owed to such bank, prior to its failure or purchase by another bank under FDIC supervision;

(5) Seeking employment with the FDIC;

(6) Conducting regular banking business at a Deposit Insurance National Bank formed by the FDIC pursuant to the authority in 12 U.S.C. 1821(h).

(b) This regulation governs the conduct of FDIC personnel in their interaction with employees of insured banks and employees of other state or federal agencies while discharging the FDIC's statutory obligations as insurer and/or receiver of financial institutions. It does not apply to financial institutions insured by the FDIC.

(c) Although application for employment and employment with the FDIC are programs and activities of the FDIC for purposes of this regulation, they shall be governed only by the standards set forth in § 352.6 of this part.

§ 352.3 Definitions.

For purposes of this part, the term—

(a) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities set forth in § 352.2.

(b) "Complete complaint" means, with respect to any FDIC program or activity other than employment, a written statement that contains the complainant's name and address and describes the FDIC's action in sufficient detail to inform the FDIC of the nature and date of the alleged violation of these regulations. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name if possible) the alleged victims of discrimination.

(c) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots and other real or personal property. As used in this definition, "personal property" means only furniture, carpeting and similar features not considered to be real property.

(d) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) A physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) A mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Major life activities" including functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the FDIC as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (d)(1) of this definition but is treated by the FDIC as having such an impairment.

(e) "Qualified handicapped person" means—

(1) With respect to any FDIC program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and can achieve the purpose of the program or activity without modifications in the program or activity that the FDIC can determine on the basis of a written record would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity;

(3) With respect to employment, a handicapped person as defined in 29 CFR 1613.702(f), which is made applicable to this part by § 352.6.

(f) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this regulation, section 504 shall be applied only to the programs and activities conducted by the FDIC as set forth in § 352.2 of this regulation.

§ 352.4 Self-evaluation.

(a) Within one year of the effective date of this regulation, the FDIC shall conduct a self-evaluation of its program implementing the spirit of section 504.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representating handicapped persons, to participate in the self-evaluation process by submitting written comments. Comments on the program made by such persons or organizations, while not binding on the FDIC for adoption, will be received and considered as part of the FDIC's self-evaluation process.

(c) The FDIC shall, for a period of three years from the date of completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified in the program implementing the spirit of section 504; and

(2) A description of any modifications made in the program.

§ 352.5 General requirements.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the programs and activities conducted by the FDIC and set forth in § 352.2 of this regulation.

(b) The FDIC, in providing any services under the programs and activities set forth in § 352.2 of this part, shall ensure that qualified handicapped persons are provided with an equal opportunity to benefit from or to reach the same level of achievement from such services as that provided to non-handicapped persons.

(c) The FDIC, in providing any services under the programs and activities set forth in § 352.2 of this part, shall give priority to those methods of administration which will not segregate participation by qualified handicapped persons in FDIC-conducted programs and activities from participation by non-handicapped individuals.

§ 352.6 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the FDIC. The definitions, requirements, and procedures (including those pertaining to employment discrimination complaints) of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in the FDIC.

§ 352.7 Program accessibility: Existing facilities.

(a) *General.* The FDIC shall operate each of the programs or activities set forth in § 352.2 of this part so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the FDIC to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the FDIC to take any action that the FDIC can determine on the basis of a written record would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If it is determined that an action would result in such an alteration or such burdens, the FDIC shall take other reasonable actions that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The FDIC may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The FDIC is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

(c) *Time period for compliance.* The FDIC shall comply with the obligations established under this section within ninety days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to existing facilities will be undertaken to achieve program accessibility, the FDIC shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed after consultation with representatives of the General Services Administration and the Architectural and Transportation Barriers Compliance Board. The plan shall—

(1) Identify physical obstacles in the FDIC's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe the methods that will be used to make the facilities accessible;

(3) Specify the proposed schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify proposed steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 352.8 Program accessibility: New construction and alterations.

Each building or part of a building in which the programs or activities set forth in § 352.2 will be carried on, and which is newly constructed, or substantially altered by, on behalf of, or for the use of the FDIC, shall be designed, constructed or altered so as to be readily accessible to, and usable by, handicapped persons.

§ 352.9 Communications.

(a) The FDIC shall take appropriate steps to ensure effective communication with participants in the FDIC programs and activities set forth in § 352.2.

(1) The FDIC shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities set forth in § 352.2 of this part.

(i) In determining what type of auxiliary aid is necessary, the FDIC shall give primary consideration to any reasonable requests of the handicapped person.

(ii) The FDIC need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the FDIC communicates by telephone, it shall use telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems with hearing impaired participants and beneficiaries.

(b) The FDIC shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. Interested persons may obtain such information by calling, writing or visiting the FDIC Office of Equal Employment Opportunity, located at 550 17th Street, NW., Washington, DC 20429. The Office of Equal Employment Opportunity telephone number is (202) 898-6745 (District of Columbia area) and (800) 424-5488 (all others) (TDD).

(c) The FDIC shall provide information at a primary entrance to each of its accessible and inaccessible facilities where programs or activities as set forth in § 352.2 are conducted, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the FDIC to take any action that the FDIC can determine on the basis of a written record would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action that is required to comply with this section would result in such an alteration or such burdens, the FDIC shall take other reasonable actions that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 352.10 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in the FDIC programs or activities set forth in § 352.2 of this part.

(b) The FDIC shall process complaints alleging employment discrimination on the basis of handicap according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The FDIC's Office of Equal Employment Opportunity shall be responsible for coordinating implementation of this section. All complaints should be sent to the FDIC's Office of Equal Employment Opportunity, 550 17th Street, NW., Washington, DC 20429.

(d) The FDIC shall accept and investigate all complete complaints over which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The FDIC may extend this time period for good cause.

(e) If the FDIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complainant to the appropriate government entity.

(f) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the FDIC shall notify the complainant of the results of the investigation in a letter containing—

(1) Finding regarding the alleged violations;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(g) Appeals of the findings or remedies must be filed by the complainant within 90 days of receipt from the FDIC of the letter required by § 352.10(f). The FDIC may extend this time for good cause.

(h) Timely appeals shall be accepted and processed by the Chairman of the FDIC or designee.

(i) The Chairman of the FDIC or designee shall notify the complainant of the results of the appeal within 90 days of the receipt of the request. If the Chairman of the FDIC or designee determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make a determination on the appeal.

(j) The time limits set forth in (f) and (i) above may be extended for an individual case when the Chairman of the FDIC or designee determines that there is good cause, based on the particular circumstances of that case, for the extension.

(k) The FDIC may delegate its authority for conducting complaint investigations to other federal agencies, except that the authority for making the final determination may not be delegated.

§ 352.11 Notice.

The FDIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such manner as the Chairman or his designee finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

By order of the Board of Directors, 7th day of March, 1986.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-6058 Filed 3-19-86; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-5, Amdt. 39-5253]

Airworthiness Directives; Boeing Vertol Company Model 234 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons a new airworthiness directive (AD) part of which was previously made effective as to all know U.S. owners and operators of Boeing Vertol 234 series helicopters by individual telegrams. The AD requires initial and repetitive bore-scope inspections of main rotor head vertical hinge pins and a one-time eddy current and magnetic particle inpsection. Failure of a main rotor head vertical hinge pin could result in possible loss of the helicopter.

EFFECTIVE DATE: March 31, 1986, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T85-23-51 issued November 20, 1985, which contained parts of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register effective March 31, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Boeing Vertol Company, Boeing Center, P.O. Box 1858, Philadelphia, Pennsylvania 19142. A copy of the documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chrastil, ANE-172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone number (516) 791-6221.

SUPPLEMENTARY INFORMATION: On November 20, 1985, telegrahic AD T85-23-51 was issued and made effective immediately to all known U.S. owners and operators of Boeing Vertol Model 234 helicopters. The AD required an initial and daily repetitive bore-scope inspection of main rotor head vertical hinge pins, Part Number (P/N) 114R2172-1, and removal and replacement of any vertical hinge pin found cracked.

The AD was prompted by the reported failure, in flight, of a main rotor head vertical hinge pin on a U.S. Army CH-47D helicopter, after which a precautionary landing was made. During fleet inspection, another CH-47D vertical hinge pin was found cracked. The same parts, P/N 114R2172-1, are installed on the civil Model 234 helicopter. Inspection of the two vertical pins showed that the failed surface developed a crack during manufacture. Subsequently it was determined that a one-time eddy current and magnetic particle inspection should be accomplished which would also eliminate the need for any further daily bore-scope inspection. This AD incorporates these additional inspections.

Since it was found that immediate correction was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegram issued November 20, 1985 to all known U.S. owners and operators of Boeing Vertol Model 234 helicopters. These conditions still exist and the AD is revised as noted and hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

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

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

2. By adding the following new AD:

Boeing Vertol Company: Applies to Boeing Vertol Model 234 series helicopters certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent possible hazards in flight associated with a cracked main rotor head vertical hinge pin, accomplish the following:

(a) Prior to further flight, conduct a visual inspection of the forward and aft main rotor head vertical hinge pins, P/N 114R2172-1, internal surface with a light assisted bore-scope for cracks.

(b) After the initial inspection of paragraph (a), repeat the inspection prior to the first flight of each day.

(c) Within the next 150 hours' time in service from March 31, 1986, conduct an eddy current inspection of the internal surfaces of the forward and aft main rotor head vertical hinge pins, P/N 114R2172-1, in accordance with the instructions contained in Boeing Vertol Document D210-12089-1 titled "Eddy Current Inspection Requirements for Detection of Cracks in P/N 114R2172, Vertical Hinge Pins." Upon accomplishment of this paragraph, the daily bore-scope inspection of paragraph (b) may be eliminated.

(d) Within the next 500 hours' time in service from March 31, 1986, remove from the helicopter the main rotor head vertical hinge pins and conduct a magnetic particle inspection in accordance with Boeing Airplane Company document BAC 5424 titled "Magnetic Particle Inspection" Class B.

(e) Remove from service vertical hinge pins found cracked and replace with a serviceable part prior to further flight.

(f) Any alternate method of compliance with the AD which provides an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Valley Stream, New York 11581.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Vertol Company, Boeing Center, P.O. Box 1858, Philadelphia, Pennsylvania 19142. These documents may also be examined at the Office of the Regional Counsel, FAA Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective March 31, 1986, as to all persons except those to whom it was made immediately effective by telegraphic AD T85-23-51 issued November 20, 1985, which contained part of this amendment.

Issued in Fort Worth, Texas, on March 3, 1986.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 86-6043 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-32, Amdt. 39-5254]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 332 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of all SNIAS AS 332 series helicopters by individual priority letters. The AD requires installation of a placard which advises the flightcrew that all flight operations at temperatures below +3 °C in the presence of ice crystals, rain, mist, drizzle, dense clouds, snow, or sleet are prohibited. The AD is needed to prevent engine failure which could result in a forced landing. Subsequently, modifications which alleviate the limitations of the above placard have been devised and are mandated by this AD. Also, it has been determined that only certain configurations of the SNIAS Model AS 332 helicopter are subject to the requirements of the AD. The limitations section of the AD is revised accordingly.

EFFECTIVE DATE: March 19, 1986.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support.

A copy of each of the service documents pertinent to this AD is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30; or Wilbur F. Wells, Aircraft Certification Division, ASW-100, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877-2551.

SUPPLEMENTARY INFORMATON: On October 30, 1985, priority letter AD 85-22-09 was issued and made effective immediately as to all known U.S. owners and operators of all SNIAS AS 332 helicopters. The AD requires installation of a placard which advises the flightcrew that all flight operations in ambient temperatures below +3 °C in the presence of ice crystals, rain, mist, drizzle, dense clouds, snow, or sleet are prohibited. This limitation was prompted by a report of a dual engine failure (flameout) of an AS 332 helicopter operating in atmospheric conditions involving one or more of the icing phenomena listed by the placard described above.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued October 30, 1985, to all known U.S. owners and operators of SNIAS AS 332 helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Since issuance of priority letter AD 85-22-09, it has been determined that the restrictions of AD 85-22-09 are not applicable to helicopters with certain engine inlet configurations; therefore, the applicability section of this AD is revised to exempt those helicopters. In addition, the manufacturer has developed and tested other engine inlet modifications and adjustments which enable the engines to operate satisfactorily in the icing conditions which prompted issuance of the original priority letter AD. These modifications and adjustments are required for safety and are mandated by this AD in accordance with a schedule defined in the body of this AD. Upon accomplishment of these actions, the restrictions imposed by the original priority letter AD are removed.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

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

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

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to SNIAS Model AS 332 C or CL helicopters fitted with engine stubframe Part Number (P/N) 332 A 58.00.12.00 and Model AS 332 L or L1 helicopters fitted with engine stubframe P/N 332 A 58.00.13.00, certificated in any category.

Compliance is required as indicated, unless already accomplished.

(a) Compliance required within 10 hours' time in service after the effective date of this AD. To avoid operating conditions where ice ingestion into the engines may cause engine failure, permanently attach a placard, stencil, or decal to the instrument panel in full view of the flightcrew which includes the following

limitations statement: ALL FLIGHT OPERATIONS BELOW PLUS 3 DEGREES CELSIUS IN THE PRESENCE OF ICE CRYSTALS, RAIN, MIST, DRIZZLE, DENSE CLOUDS, SNOW, OR SLEET ARE PROHIBITED.

(b) Modify and adjust the engine air inlets of applicable helicopters as specified below:

(1) Within 200 hours' time in service after the effective date of this AD but not later than March 31, 1986, accomplish the engine air intake modifications prescribed by Aerospatiale Service Bulletin No. 53.62 (corresponds to Modification AMS 332 A 07.22.752).

(2) Within 400 hours' time in service after the effective date of this AD but not later than March 31, 1986, accomplish the engine intake alignment inspections and adjustments prescribed by Aerospatiale Service Bulletin No. 71.07 (corresponds to Modification AMS 332 A 07.22.702).

(c) Upon accomplishment of the requirements of paragraph (b), the limitations placard, stencil, or decal required by paragraph (a) may be removed.

Note 1.—This AD conforms in part to French AD 85-169-20(B), Revision 1, dated December 17, 1985.

Note 2.—For the requirements regarding recording compliance and method of compliance with this AD in the aircraft's permanent maintenance records, see FAR § 91.173.

(d) Upon request, an alternate means of compliance which provides an equivalent level of safety may be used when approved by the Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, or by the Manager, Aircraft Certification Division, FAA, Southwest Region; ASW-100, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877-2581.

(e) The aircraft may be flown in accordance with FAR §§ 21.197 and 21.199 to a base where the requirements of paragraph (b) of this AD may be accomplished.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective March 19, 1986.

Issued in Fort Worth, Texas, on March 3, 1986.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 86-6045 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-34]

Amend Transition Areas; Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides additional controlled airspace from 700 feet and 1,200 feet above the surface for aircraft executing a new instrument approach at the Gunnison Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or, otherwise, comply with instrument flight rules (IFR) during instrument flight conditions.

EFFECTIVE DATE: 0901 UTC, June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, Federal Aviation Administration, Docket No. 85-ANM-34, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1986, the FAA proposed to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Gunnison, Colorado, transition areas (51 FR 3991).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations provides controlled airspace for aircraft executing a new instrument approach to Gunnison, Colorado, Airport.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

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

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

2. By amending § 71.181 as follows:

Aspen, Colorado—[Amended]

That airspace extending upward from 700 feet above the surface within 9.5 miles northwest and 6 miles southeast of the Gunnison VORTAC 045° and 225° radials extending from 12 miles northeast to 19 miles southwest of the VORTAC and within a 16.5 mile radius of the VORTAC clockwise between the 264° and 294° radials; and that airspace extending upward from 1,200 feet above the surface within a 23-mile radius of the VORTAC clockwise between the 204° and 275° radials.

Issued in Seattle, Washington, on March 7, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-6044 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373, 376, and 385

[Docket No. 60106-6006]

Donations of Goods To Meet Basic Human Needs

Correction

In FR Doc. 86-5375 beginning on page 8482 in the issue of Wednesday, March 12, 1986, make the following corrections:

1. On page 8483, in the first column, in the section heading for § 373.5, "procedures" should read "procedure".

2. On page 8484, in the second column, in § 373.5(h)(4), in the second line, "of any" should read "or any".

3. On page 8484, in the third column, in amendatory instruction 7, in the third line, remove "introductory text".

4. On page 8485, in the first column, in § 385.7(a), in the fourth line, "§ 375.5" should read "§ 373.5".

BILLING CODE 1505-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1302

Nondiscrimination in Federally Assisted Programs of TVA; Technical Amendment

AGENCY: Tennessee Valley Authority.

ACTION: Final rule; technical amendment.

SUMMARY: This document gives public notice that information collection requirement in TVA regulations have been approved by the Office of Management and Budget under the Paperwork Reduction Act.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Jr., Associate General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, telephone No. 615-632-4142.

PART 1302—[AMENDED]

1. The authority citation for 18 CFR Part 1302 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831-831dd, and sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1.

§ 1302.6 [Amended]

2. 18 CFR 1302.6 is amended by adding the following parenthetical text at the end of the section:

(Section 1302.6 contains information collection requirements approved by OMB for use through February 29, 1989. OMB No. 3316-0077)

§ 1302.7 [Amended]

3. 18 CFR 1302.7 is amended by adding the following parenthetical text at the end of the section:

(Section 1302.7 contains information collection requirements approved by OMB for use through February 29, 1989. OMB No. 3316-0077).

Dated: March 13, 1986.

W.F. Willis,

General Manager.

[FR Doc. 86-6065 Filed 3-19-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program; Approval of Amendment

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment submitted by the State of West Virginia as a modification to its permanent regulatory program (hereinafter referred to as the West Virginia program), which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of a letter and supporting documents from West Virginia dated November 11, 1985 discussing the State's anticipated withdrawals from the special reclamation fund, which is part of the alternative bonding system, for general administrative expenses not related to bond forfeiture site reclamation.

After considering all comments received during the public comment period ending February 13, 1985, and after conducting a thorough review of the proposed amendment, the Director has determined that the submission meets the requirements of SMCRA and the Federal regulations and he is, therefore, approving it. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background and Submission of Amendment

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program to the Secretary of the Interior. On October 22, 1980, following a review of the proposed amendment in accordance with 30 CFR Part 732, the Secretary approved the proposed program in part and disapproved it in part (45 FR 69249-69271). West Virginia resubmitted its proposed program on December 19, 1980. On January 21, 1981, the Secretary conditionally approved the resubmitted program. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program, can be found in the January 21, 1981 **Federal Register** (46 FR 5915-5956).

Since then, the West Virginia program has been amended several times, including a July 11, 1985 amendment approving the West Virginia Energy Act (WVEA), with certain exceptions (50 FR 28316-28324). WVEA 22A-3-11(g) provides that all special reclamation taxes collected as part of West Virginia's alternative bonding program shall be deposited in the special reclamation fund for use in reclaiming bond forfeiture sites where the site-specific bond proves insufficient. However, it also authorizes the Commissioner to "expend such amounts as are reasonably necessary to implement and administer the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code." This provision would allow expenditures from the fund for general administrative purposes not related to reclamation on forfeiture sites and for expenses associated with noncoal programs.

The Secretary orginally approved West Virginia's alternative bonding system, as contained in the revised program submission of December 19, 1980, on the condition that the State obtain an actuarial study showing that the special reclamation fund would always contain sufficient monies to meet all anticipated needs. On October 29, 1982, West Virginia submitted the required study (Administrative Record No. WV 456), and, after reviewing the study, the Secretary, removed condition on March 1, 1983 (48 FR 8447-8451). However, this study did not consider the impact on the fund of authorizing expenditures for general administrative purposes or for noncoal programs.

Therefore, in approving the WVEA, the Director required West Virginia to submit, no later than October 11, 1985, a new analysis demonstrating that the special reclamation fund could withstand all authorized administrative

expense withdrawals without hampering the State's ability to reclaim all bond forfeiture sites in a timely manner and in accordance with their approved reclamation plans. On November 11, 1985, West Virginia submitted a letter containing an analysis of the fund's current financial status and explaining the State's current intentions regarding administrative expense withdrawals. The letter was accompanied by quarterly financial reports for the special reclamation fund covering the period of October 1, 1982 through September 30, 1985, and by tables summarizing the collection history and status of civil penalties and forfeited bonds, and the estimated reclamation liabilities for unreclaimed sites for which bonds had been forfeited and collected (Administrative Record No. WV 694).

The January 1, 1986 **Federal Register** (51 FR 1520–1521) announced receipt of these materials and requested public comment on their adequacy. The public hearing scheduled for February 3, 1986 was not held since no one requested to testify in such a forum. The public comment period closed on February 13, 1986.

II. Director's Findings

In accordance with SMCRA and 30 CFR 732.17, the Director finds that the proposed amendment, as submitted by West Virginia on November 11, 1985, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

Section 509(c) of SMCRA and the Federal regulations at 30 CFR 800.11(e) provide that the Secretary, acting through OSMRE, may approve an alternative bonding system if (1) it will assure that the regulatory authority will have sufficient money available to complete the approved reclamation plans for any areas which may be in default at any time and (2) it will provide a substantial economic incentive for the permittee to comply with all reclamation provisions. As discussed in Finding 18.1 of the January 21, 1981 **Federal Register** (46 FR 5926) and Finding 7 of the March 1, 1983 **Federal Register** (48 FR 8448), the Secretary has determined that the West Virginia alternative bonding system, as orginally approved, meets these objectives and purposes. However, section 22A–3–11(g) of the WVEA, which became effective on July 11, 1985, authorizes expenditures from the fund of such amounts as are reasonably necessary to implement and administer Chapters 22A and 22B of the WVEA. Since the actuarial study upon which OSMRE based its 1983 approval did not consider the effects of administrative expense withdrawals unrelated to bond forfeitures, the Secretary, in approving the WVEA, required that the State submit a comprehensive financial analysis demonstrating that such withdrawals would not hamper the State's ability to complete the approved reclamation plans of all areas which may be in default at any time in a timely manner.

In its response on November 11, 1985, West Virginia states that the bulk of the Department of Energy's administrative expenses would be incurred under Chapter 22 of the WVEA, costs for which the statute does not authorize withdrawals from the special reclamation fund. In addition, the letter stated that West Virginia would not use fund monies to cover noncoal administrative expenses (Chapter 22B).

Over the fund's three years of operation, annual income from bond forfeitures, civil penalties and coal severance tax revenues has averaged $1,835,000 and annual expenditures have averaged $1,550,000, creating an average annual increase in current assets of $285,000. As of September 30, 1985, the fund's current assets totaled in excess of $5,000,000. Current liabilities as of that date include the reclamation of 81 sites for which bond has been forfeited, totaling 1,666 acres. Based on previous experience, the State estimates that the reclamation work required for these sites will cost approximately $3,000,000, leaving the fund with a net balance of $2,000,000 in the current assets account.

The letter further states that West Virginia interprets the term "reasonably necessary" as preventing withdrawals which would jeopardize the fund's solvency, and that such withdrawals are not expected to exceed ten percent of the total current assets. Thus, under the September 30, 1985 conditions, West Virginia would be able to withdraw approximately $500,000, leaving a net current assets balance of $1,500,000. Since State law provides that collection of the coal severance tax, which is the fund's largest and most stable source of income, averaging $900,000 per year, will cease when the fund's net current assets exceed $2,000,000 and will not resume until the balance in that account dips below $1,000,000, the Director finds that a withdrawal of the proposed magnitude will not alter the amount of funds available for reclamation purposes in the next fiscal year and that it will not hamper the State's ability to fulfill reclamation commitments on bond forfeiture sites. Therefore, the Director finds that the financial analysis submitted by West Virginia satisfies the requirements of 30 CFR 948.16(b) for fiscal year 1985–86.

However, income and liabilities from bond forfeitures and income from civil penalties are subject to substantial fluctuation as is interest income on fund assets. Given the magnitude of the current anticipated administrative expense withdrawals and the uncertainty of future income and liabilities, the Director finds that, before any further withdrawals for administrative expenses unrelated to bond forfeitures may be made, the State either must perform a withdrawal-specific financial analysis for each fiscal year similar to that approved in this amendment or must conduct a comprehensive study of the fund's future performance under this new set of assumptions. If the study or analysis indicates that administrative expense withdrawals would hamper the fund's ability to achieve its objectives, the withdrawals would not be permitted.

III. Public Comments

No comments from the public were received by the close of the comment period of February 13, 1986.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies. Of the agencies which responded (the National Park Service, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Mine Safety and Health Administration and the U.S. Department of Energy), none elected to comment on the proposed amendment.

IV. Director's Decision

The Director, based on the above finding and West Virginia's commitments to prohibit all noncoal administrative expense withdrawals and to limit other general administrative expenses to ten percent of the fund's current assets on an annual basis, is approving the November 11, 1985 amendment to the West Virginia program as being sufficient to demonstrate that withdrawals of the specified magnitude from the special reclamation fund for non-forfeiture-related administrative expenses in fiscal year 1985–86 will not hamper the State's ability to promptly complete the approved reclamation plans of all areas which may be in default at any time. Accordingly, he is removing and reserving the required amendment codified at 30 CFR 948.16(b). However, in approving the amendment, the Director is requiring that, before any such withdrawals may be made in future years, West Virginia must make a

similar demonstration on fiscal year basis or conduct an actuarial study demonstrating that the fund can withstand all such projected withdrawals without impairing its reclamation capability with respect to either extent of work or timeliness. The Federal rules at 30 CFR Part 948 are being amended to implement this decision.

Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 29, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 14, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining.

PART 948—WEST VIRGINIA

30 CFR Part 948 is amended as follows:

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 948.15 is amended by adding paragraph (i) to read as follows:

§ 948.15 Approval of regulatory program amendments.

* * * * *

(i) The financial analysis and supporting documentation submitted by West Virginia on November 11, 1985 is approved as being adequate to demonstrate that sufficient money will be available in the special reclamation fund both to complete the approved reclamation plans for any areas that may be in default at any time and to cover the general administrative expense withdrawals proposed for fiscal year 1985-86. This amendment also prohibits all withdrawals for noncoal administrative expenses and limits all administrative expense withdrawals to an amount which cumulatively does not exceed ten percent of the fund's current assets as of September 30, 1985.

Before making any withdrawals in subsequent fiscal years to cover administrative expenses unrelated to bond forfeitures, West Virginia must submit, for OSMRE concurrence, a comprehensive analysis demonstrating that sufficient money will be available in the special reclamation fund both to promptly complete the approved reclamation plans for any areas that may be in default at any time and to cover the administrative expense withdrawals proposed under section 22A-3-11(g) of the Code of West Virginia.

§ 948.16 [Amended]

3. 30 CFR 948.16 is amended by removing and reserving paragraph (b).

[FR Doc. 86-6075 Filed 3-19-86; 8:45am]

BILLING CODE 4310-05-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 Bunker Hill

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 has determined that USS BUNKER HILL (CG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS BUNKER HILL (CG 52) is a vessel of the Navy which, due to its speical construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located 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 placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I. sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS Bunker Hill	CG 52						X	X	38

Dated: March 10, 1986.
Approved:
James F. Goodrich,
Acting Secretary of the Navy.
[FR Doc. 86-6101 Filed 3-19-86; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Honolulu Regulation 86-01]

Security Zone Regulations; Outer Apra Harbor, Guam, Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: This Coast Guard is establishing a security zone around the U.S. Navy vessel USS PROTEUS which will be moored at mooring buoy no. 951 located at 13°26'51" N, 144°38'13.8" E, in Outer Apra Harbor, Guam, Marianas Islands. The security zone will extend for a distance of 200 yards in all directions from USS PROTEUS. The zone is needed to safeguard USS PROTEUS against destruction from sabotage or other causes of similar nature. Entry into this zone is prohibited unless authorized by Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on April 29, 1986. It terminates on May 9, 1986 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT R.E. Tinker, (671) 339-6110, at USCG Marianas Section Office, Guam.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation. Publishing an NPRM or delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction of USS PROTEUS.

Drafting Information

The drafters of this regulation are LT R.E. Tinker, project officer for the Captain of the Port, and LCDR S.R. Campbell, project attorney, Fourteenth Coast Guard District Legal Office.

Discussion of Regulation

The Navy has requested that a security zone be established. The incident requiring this regulation will begin on April 29, 1986 when the USS PROTEUS will moor at mooring buoy no. 951 in Outer Apra Harbor, Guam. Since mooring buoy no. 951 is a Navy maintained mooring buoy, and is located in excess of 500 yards from the main shipping channel, there should be no adverse impact on harbor use due to this security zone. USS PROTEUS will moor at the buoy to undertake routine maintenance work, and the security zone will be terminated when the USS PROTEUS leaves the moorage upon completion of this work. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1401 is added to read as follows:

§ 165.T1401 Security Zone: OUTER APRA HARBOR, GUAM

(a) *Location.* The following area is a security zone: In Outer Apra Harbor, Guam, when the USS PROTEUS is moored to mooring buoy no. 951 located at 13°26'51" N, 144°38'13.8" E, a security zone will extend in all directions from the vessel for a distance of 200 yards.

(b) *Effective date.* This regulation becomes effective on April 29, 1986. It terminates on May 9, 1986 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: March 7, 1986.
C.W. Gray,
Captain, U.S. Coast Guard, Captain of the Port Honolulu, Hawaii.
[FR Doc. 86-6170 Filed 3-19-86; 8:45 am]
BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Annual Fee; Third-Class Bulk Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule change amends section 641 of the Domestic Mail Manual concerning annual third-class bulk fees. The change will make it clear that when a bulk third-class mailing is made under the permit imprint system, only the individual or organization whose permit imprint is shown on the mailing piece itself and on the mailing statement must pay the annual bulk mailing fee. Currently, a bulk fee must be paid for the person or organization actually entering mailings at the bulk rates at a post office, regardless of the method of postage payment.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Beller, (202) 268-5166.

SUPPLEMENTARY INFORMATION: On February 3, 1986, the Postal Service published in the **Federal Register**, for comment, a proposed rule concerning section 641 of the Domestic Mail Manual. 51 FR 4189-90. The change was proposed to clarify the applicability of the requirement for payment of bulk fees.

No written comments were received. Therefore, the Postal Service hereby adopts the following final regulation on this subject as an amendment to the Domestic Mail Manual, which is

incorporated by reference in the Code of Federal Regulations. See CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 6—THIRD-CLASS MAIL

640 Authorizations and Permits

2. Revise 641 to read as follows:

641 Annual Fee—Bulk Rates

Except when a third-class bulk mailing is made under the permit imprint system, each person or organization that enters mailings at the regular or special bulk third-class rates must pay an annual bulk mailing fee at each post office where one or more mailings will be deposited (see 612.1). Persons or organizations paying this fee may enter mail of their clients as well as their own mail. When a third-class bulk mailing is made under the permit imprint system, the person or organization whose permit imprint is on the mailing piece must put his or its permit number on the mailing statement and must pay the annual bulk mailing fee. The annual bulk mailing fee must be paid at or before the time of the first bulk rate mailing of each calendar year. Note: This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2).

A transmittal letter making this change in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. This change will be published in the **Federal Register** as provided in 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-6106 Filed 3-19-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2988-3; MS-004]

Approval and Promulgation of Implementation Plans; Mississippi; Revised New Source Review Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 17, 1981, the State of Mississippi adopted a revision to its State Implementation Plan regarding nonattainment areas. This revision specifies the conditions that a new facility which is a major stationary source or a major modification must satisify in order to receive a permit to construct in a nonattainment area or in an area that impacts a nonattainment area. This revision was submitted to EPA for approval on November 25, 1981. EPA has reviewed this submittal and found that it satisfies the requirements of 40 CFR 51.18(k) as promulgated on May 13, 1980, and is therefore approving Mississippi's revised plan as it applies to sources impacting areas which are not attaining the National Ambient Air Quality Standards. Since there are no designated nonattainment areas in Mississippi, EPA is deferring action on the part of the plan covering sources locating in such areas.

EFFECTIVE DATE: This action will be effective on April 21, 1986.

ADDRESSES: Copies of the materials submitted by Mississippi may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Library, Office of Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

Mississippi Department of Natural Resources, Bureau of Pollution Control, Post Office Box 10385, Jackson, Mississippi 39205.

FOR FURTHER INFORMATION CONTACT: Al Yeast of EPA Region IV's Air Programs Branch, at the above listed address and phone (404) 881-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: Section 172 of the Clean Air Act requires states to adopt regulations which prevent the construction or operation of new or modified major sources in areas which have been designated as not attaining the National Ambient Air Quality Standards (NAAQS), except under certain conditions, as described in section 173. Sections 110(a)(2)(D) and 165(A)(3)(B) require state plans to prohibit sources in areas attaining the NAAQS from causing or contributing to violations on NAAQS.

On May 14, 1980, and August 7, 1980, EPA promulgated to its regulations which govern review of the sources described above. The May 13, 1980, **Federal Register** notice (45 FR 31304) required States to modify their SIP to: (1) Require new sources locating in all portions of designated nonattainment areas to undergo nonattainment review; (2) preclude sources outside designated nonattainment areas from causing or exacerbating violations; and (3) preclude sources from significantly impacting newly discovered nonattainment areas. The August 7, 1980, **Federal Register** notice (45 FR 52676) required Part D SIPs to be more stringent for some modified sources in nonattainment areas, and decreased the number of new sources, and the number of some modified sources, covered by the regulations.

On November 17, the Mississippi Commission on Natural Resources adopted an amendment to Mississippi Regulation APC-S-2, "Permit Regulations for Construction and/or Operation of Air emission Equipment."

This regulation specifies the conditions that a new facility which is a major stationary source or major modification must satisfy in order to receive a permit to construct in a nonattainment area or in an area that impacts a nonattainment area.

Additionally, the regulation affects sources locating in or near areas where an air quality standard is being or will be exceeded but for which no nonattainment area implementing plan has been adopted by Mississippi. Under section 2.4.8.3, the Mississippi regulation applies EPA's Emission Offset Ruling (40 CFR 51.18, Appendix S) to any facility that is a major source or major modification which locates in or near an area where NAAQS is being or will be exceeded, but for which no Mississippi nonattainment plan has been adopted. It also regulates under section 2.4.8.2, sources locating in designated nonattainment areas where a plan has been adopted. Mississippi has clarified in a letter dated November 25, 1985, that section 2.4.8.3 applies to sources in Mississippi which impact designated nonattainment areas in other states even if a Part D nonattainment plan has been adopted by the neighboring state.

On July 2, 1982, EPA proposed to approve Mississippi's submittal as part of the state implementation plan (47 FR 28976). On August 17, 1982, the United States Court of Appeals for the District of Columbia Circuit vacated a portion of EPA's regulation under which Mississippi's regulations were being approved. Specifically, the court disallowed the use of a plantwide definition of source in nonattainment areas, a definition which causes fewer

construction projects to be subject to review than EPA's previous version of the definition. Because Mississippi's regulations employ the plantwide definition, approval of the regulations was delayed until resolution of appeal of the Circuit Court decision.

On June 25, 1984, the U.S. Supreme Court upheld the plantwide definition, making it possible for EPA to proceed to approve state regulations employing it, provided a demonstration is made that use of the plantwide definition does not interfere with attainment of the National Ambient Air Quality Standards (NAAQS) or reasonable further progress.

Since the time of the proposed approval, however, the attainment status in Mississippi has changed. The one nonattainment area (Laurel) which would have been affected by the requirements under Part D of the Act, was redesignated to attainment on August 27, 1985. Thus, the only Act requirements affecting the Mississippi submittal are 110(a)(2)(D) and 165(a)(3)(B), which are implemented by 40 CFR 51.18(k).

Under the current version of the federally approved SIP, sources affected by 40 CFR 51.18(k) are not covered by the Mississippi regulations. In such cases, these sources are regulated by the state under Appendix S to 40 CFR 51.18, entitled Emission Offset Interpretative Ruling. Under the regulations submitted by Mississippi, the Interpretative Ruling is adopted by reference to cover the same set of sources.

The Interpretative Ruling satisfies all requirements of 40 CFR 51.18(k). (See 45 FR 31310, first column.) Since the Mississippi submittal fully complies with 40 CFR 51.18(k), and since the adoption of the new regulations causes no change in the way sources outside nonattainment areas are treated, EPA is today fully approving Mississippi's submittal as satisfying the requirements of 40 CFR 51.18(k).

The specific portions of the Mississippi submittal which are being approved are: Regulation APC-S-2, sections 2.4.8.1, 2.4.8.3 and 2.4.8.4. Section 2.4.8.3 applies to any major source which locates in or impacts an area where NAAQS is exceeded, but for which the State of Mississippi has not submitted a nonattainment area implementation plan. These areas include (a) a newly designated nonattainment area in Mississippi, (b) any designated nonattainment area outside Mississippi which is impacted by a source in Mississippi, (c) an area which is violating NAAQS, but has not yet been designated nonattainment, and (d) an area which would violate NAAQS due to the new or modified source.

Since there are currently no designated nonattainment areas in Mississippi, Regulation APC-S-2, section 2.4.8.2 no longer applies to any area. When such an area is designated in the future, EPA's rules may be different than now, and 2.4.8.2 may not be adequate. Therefore, EPA is deferring action on 2.4.8.2 until such time as an area is designated nonattainment.

On July 8, 1985, EPA promulgated final regulations concerning credit for stack heights in conducting air quality simulation modelling. EPA policy requires that, in order for EPA to approve any new source review regulations, states must be able to implement the substantive requirements of those regulations for sources covered by the new source review program. Mississippi has stated in a letter to EPA dated November 25, 1985, that the Bureau of Pollution Control can enforce the EPA regulation.

Final Action

EPA has reviewed the submitted material and found it to meet the provisions of 40 CFR Part 51. Therefore, EPA is today approving the State's submittal as satisfying the requirements of an acceptable plan.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

Incorporation by reference of the State Implementation Plan for the State of Mississippi was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Dated: March 12, 1986.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart Z—Mississippi

1. The authoritty citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 51.1270 is amended by adding (c)(18) as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(18) Part D and other new source review provisions were submitted by the Mississippi Department of Natural Resources on November 25, 1981.

(i) Incorporation by reference.

(A) Letter dated November 25, 1981 from Mississippi Department of Natural Resources, and Mississippi Regulation APC-S-2, section 2.4.8, "Additional Requirements for a Construction Permit for a New Facility Significantly Impacting an area in which a National Ambient Air Quality Standard is being Exceeded or will be Exceeded", was adopted by the Mississippi Commission on Natural Resources on November 12, 1981. Subsection 2.4.8.1, 2.4.8.3, and 2.4.8.4 are incorporated by reference.

(ii) Additional material.

(A) Letter to Jack Ravan from Charlie E. Blalock, dated November 25, 1985, interpreting Mississippi regulations with respect to source coverage and stack heights.

[FR Doc. 86-6090 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-25 and 101-26

[FPMR Amendment E-26]

Property Management; Transfer of Regulations Pertaining to Management of Government-Owned and -Leased Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration in an effort to consolidate policies and procedures governing the management of Government-owned and -leased motor vehicles has redesignated certain sections that appear in Subchapter E to Subchapter G. Revisions to these sections are made pursuant to recommendations by the Interagency Motor Equipment Management Committee and comments from other Federal agencies.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Frisbee, Federal Supply Service, Fleet Management Division, (703/557-1288).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternate approach involving the least net cost to society.

List of Subjects

41 CFR Part 101-25

Energy conservation, Government property management, Reporting and record keeping requirements.

41 CFR Part 101-26

Government property management.

Title 41 Parts 101-25 and 101-26 of the code of Federal Regulations are amended as follows:

PART 101-25—GENERAL

1. The authority citation for 41 CFR Part 101-25 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The table of contents for Part 101-25 is amended by removing the following entries:

Subpart 101-25.3—Use Standards

Sec.
101-25.303 [Removed]
101-25.304 [Removed]
101-25.304-1 [Removed]
101-25.304-2 [Removed]

§§101-25.303, 101-25.304, 101-25.304-1, 101-25.304-2 [Removed]

3. Sections 101-25.303, 101-25.304, 101-25.304-1, and 101-25.304-2 are removed.

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

4. The authority citation for 41 CFR Part 101-26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat, 390 (40 U.S.C. 486(c)).

5. The table of contents for Part 101-26 is amended by removing the following entries:

Subpart 101-26.4—Purchase of Items From Federal Supply Schedule Contracts

Sec.
101-26.406 [Removed]
101-26.406-1 [Removed]
101-26.406-2—101-26.406-4 [Removed]
101-26.406-5 [Removed]
101-26.406-6 [Removed]

101-26.406, 101-26.406-1, 101-26.406-2—101-26.406-4, 101-40-5, 101-26-406-6 [Removed]

6. Sections 101-26.406, 101-26.406-1, 101-26.406-2—101-26.406-4, 101-26.406-5, and 101-26.406-6 are removed.

Dated: February 26, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-6051 Filed 3-19-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2720

[Circular No. 2578]

Conveyance of Federally-Owned Mineral Interests; Amendment to the Conveyance Procedure

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations on conveyance of federally-owned mineral interests by simplifying the processing of applications to acquire the federally-owned mineral interests. These changes, for the most part, are derived from experience gained in implementing the existing regulations.

EFFECTIVE DATE: April 21, 1986.

ADDRESS: Suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, Main Interior Bldg., Room 3643, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Hemstreet (202) 343-8693.

SUPPLEMENTARY INFORMATION: Proposed rulemaking amending the existing regulations on conveyance of federally-owned mineral interests was published in the **Federal Register** on February 7, 1985 (50 FR 5269), with a 60-day comment period. During the comment period, comments were received from 12 sources, 4 from business interests, 6 from Federal agencies and 2 from private nonprofit organizations.

General Comments

The comments generally were favorable to the changes made by the proposed rulemaking, with several of the comments recommending changes to sections of the existing regulations that were not included in the proposed rulemaking. The recommended changes to sections of the existing regulations not considered by the proposed rulemaking cannot be made part of the final rulemaking because the public has not had an opportunity to review and comment on the changes, but those changes will be considered during any future amendment of part 2720.

One general comment asked what effect this rulemaking would have on pending applications. The changes made by the proposed rulemaking and adopted by this final rulemaking will be applicable to all pending applications, except those that have essentially been completed, and the issuance of a patent is all that remains to vest title to the federally-owned mineral interests in the surface owner. Except for the provision for the segregation of lands covered by an application, the amendments covered by this rulemaking are clarifications of the existing regulations and make only minor changes in the processing procedure for an application. Therefore, the final rulemaking would have little impact on the processing of pending applications.

Four comments suggested that the definition of the term "known mineral values" found in § 2720.0-5(b) of the existing regulations is too ambiguous and should be amended. The suggestions for amendment ranged from changing two words in the existing text to a total revision of the definition. Since this defintion was not included in the proposed rulemaking, no change has been made in it in the final definition. In response to the comments, the definition of this term will be reviewed and, if appropriate, a change will be made the next time Part 2720 is amended.

As a streamlining measure, one comment recommended that the final rulemaking provide that a $500 deposit be required with each application which would eliminate the need for the authorized officer to request a deposit after the application is filed. This requirement would be a substantive change in the existing regulations, a change that would require public comment before its adoption. Since the provision was not included in the proposed rulemaking for public review and comment, it cannot be included in the final rulemaking.

Another comment suggested that the final rulemaking include a definition of the term "nominal value". In classifying lands as prospectively valuable for a mineral, it is recognized that the degree of value may range from zero to a near certainty, depending on such factors as the nature of the rocks on the lands, extent of dissection by erosion and proximity to production or previously drilled exploratory holes. The term "nominal" as used by the Department of the Interior in relation to mineral value, since at least 1967, denotes a degree of value near the zero end of the scale. Since the determination of nominal value is a matter of judgment, it is appropriate that the standard used in reaching that judgment be included in the Bureau of Land Management Manual, rather than including it in the regulations. The final rulemaking has not adopted this suggestion.

Two comments suggested that the regulations should contain separate guidelines for use in connection with locatable, salable and leasable minerals. Those offering the comments expressed the view that the term "prospectively valuable" was being misused: (1) When assessing locatable minerals; (2) in situations where there is no market for salable minerals; and (3) the presumption of value of leasable minerals derived from generalized maps of sedimentary basins without regard to more specific factual information. This suggestion is being considered for inclusion in the Bureau of Land Management manuals, where it is more appropriate. The final rulemaking has not adopted the suggestion.

Specific Comments

One comment suggested a change in the definition of the term "proof of ownership" contained in the proposed rulemaking. The comment made the point that the only information needed is the identity of the surface owner of record which could be met by a certified copy of a document from the county tax assessor showing the current surface owner of record. The key element in the definition of the term "proof of ownership" is the phrase ". . . evidence of title acceptable in local realty practice by attorneys and title examiners. . . ." The remainder of the definition is only one form of evidence that is universally acceptable. The definition does not attempt to include all such acceptable documents. If a certification by the county tax assessor showing the current surface owner of record is acceptable to attorneys and title examiners in local realty practice, it will meet the requirements of the definition. The final rulemaking has not adopted the suggested change.

All of the comments pointed out that the Federal Land Policy and Management Act provides for the conveyance of federally reserved mineral interests that do not contain known mineral values without a determination of interference or beneficial use. This point is well taken and the final rulemaking has been corrected to properly reflect the law. One of the comments suggested that the final rulemaking should contain more discussion of and a definition of what constitutes interference or preclusion. The comment questioned whether nonmineral development included the use of lands for plant sites, waste dumps, tailing sites, etc. The comment went on to ask how much discretion does the authorized officer have in making the determination of interference or preclusion? Each case will be unique, with a different set of facts, making it impractical to attempt to define what constitutes interference or preclusion so that it covers every case. The facts presented with an application dictate the action to be taken by the authorized officer, with his decision of whether interference or preclusion exists being dependent upon those facts. Mineral extraction plant sites, waste dumps, tailing sites and other such mining related activities would not be considered nonmineral development. Sale of federally reserved mineral interests of known value would be inappropriate for these purposes. Such development should be placed on lands having no known mineral value. If a surface owner insists upon placing such facilities on lands with known mineral values that have been reserved by the United States, it will be at that surface owner's risk.

A comment suggested that the word "hypothecation" that appears in § 2720.6 of the proposed rulemaking be changed to the word "hypothesis" in the final rulemaking. The comment pointed out that the word "hypothecation" means to pledge without delivery of title and is not appropriate. The suggestion is well taken and the final rulemaking contains the word "hypothesis".

A final comment on the policy section of the proposed rulemaking asked whether the proposed rulemaking dealt only with sale of federally reserved mineral interests or included exchanges of such interests. The proposed and final rulemakings cover only the sale of federally reserved mineral interests, with the exchange of public lands and the interests therein, including mineral interests, covered by the regulations in 43 CFR Part 2200.

A comment on the provisions of § 2720.1-1 of the proposed rulemaking suggested that the final rulemaking be amended to simply state that pending the issuance of the conveyance document for the mineral interests, the mineral interests will not be available for leasing. The comment reasoned that the term "segregate" had a special meaning in the oil and gas program of the Bureau of Land Management, which is to separate or divide a lease. The term "segregate" is used throughout the various Parts of Subchapter B of Title 43 of the Code of Federal Regulations with a meaning that is consistent with its use in the proposed rulemaking; therefore, the final rulemaking makes no change in its use of the term.

A comment recommended that the final rulemaking contain language specifically requiring that the applicant pay the cost of publication of the notice of realty action. This recommendation has not been adopted by the final rulemaking because §§ 2720.1-3(b) and 2720.3(a) of the existing regulations make the applicant responsible for all administrative costs incurred by the United States in connection with the processing of an application for the conveyance of federally-owned mineral interests.

A comment stated that publication in the **Federal Register** was not necessary to effect segregation of the interest in lands covered by the application. The comment went on to suggest that the final rulemaking provide that segregation became effective upon filing of an application for conveyance of federally-owned mineral interests. The final rulemaking has made no change in the publication requirement because the segregation of lands without proper publication has been criticized in the past as being inconsistent with section 5 of the Federal Register Act (44 U.S.C. 1505). Publication of the notice of segregation in the **Federal Register** assures that constructive notice is given to all parties of interest.

One comment interpreted the segregation provision of the proposed rulemaking as segregating the lands covered by an application from all forms of application, including conveyance of federally-owned mineral interests applications. Since the notice segregating the federally-owned mineral interests will be published after receipt of an application, the filing of the application will have no segregative effect. No change has been made in the final rulemaking in response to this comment.

Several comments opposed the requirement in the proposed rulemaking for a metes and bounds survey because it was an unnecessary departure from longstanding procedure and precedent. It was suggested that there may be gaps and overlaps between metes and bounds descriptions that would be unmanageable. These comments also expressed the view that the use of legal subdivisions and aliquot parts is subject to the least amount of error. Section 209(b) of the Federal Land Policy and Management Act (43 U.S.C. 1719(b)) provides for the conveyance of federally-owned mineral interests only to the existing or proposed record owner of the surface. While the use of legal subdivisions and aliquot parts is normally the method used to describe ownership, there are situations where a metes and bounds description in the only accurate way to describe ownership. This is especially true when lands are divided and sold by metes and bounds descriptions. The final rulemaking has been amended to require that the survey evidence be acceptable to the authorized officer. Any survey evidence submitted will be reviewed by the Chief of Cadastral Survey for the State to make certain that the description closes and does not overlap other lands that are not owned by the applicant.

A final comment on the requirement in the proposed rulemaking for survey evidence suggested that the language be changed from ". . . and a showing in the applicant. . ." to ". . . and a showing by the applicant. . . ." This suggestion has not been adopted by the final rulemaking because the word "in" modifies the word "ownership" and the preferred usage is to say ownership in rather than ownership by.

Four of the comments strongly suggested retention of the 90-day period during which the authorized officer is to determine whether an application meets the requirements for further processing and to determine the amount of the deposit required and so inform the applicant. Those comments expressed the view that the 90-day requirement is the only thing in the regulations that assures an applicant of prompt consideration of an application. The final rulemaking retains the 90-day requirement now contained in the existing regulations.

One of the comments on § 2720.1-3 of the proposed rulemaking suggested that the references to the U.S. Geological Survey contained in the section be deleted because the functions described are now handled by the Bureau of Land Management. The final rulemaking has adopted this suggestion because the change is an administrative recognition of changes in the functions of the two bureaus that have already occurred.

The principal author of this final rulemaking is David C. Hemstreet, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The information collection requirements contained in this final rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0153.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 501 et seq.).

The changes made by this final rulemaking will simplify the conveyance of federally-owned mineral interests and speed the processing of applications for the conveyance of federally-owned mineral interests. The changes will impact and benefit all entities equally because the conveyance of federally-owned mineral interests is open to all existing or proposed surface owners, regardless of their size.

List of Subjects in 43 CFR Part 2720

Administrative practice and procedure, Public lands—mineral resources, Public lands—sales.

PART 2720—[AMENDED]

Under the authority of sections 209 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719, 1740), Part 2720, Group 2700, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

February 24, 1986

J. Steven Griles,

Assistant Secretary of the Interior.

1. The "Note" appearing immediately after the heading for Group 2700 is revised to read:

Note.—The information collection requirements contained in Parts 2720 and 1740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0153 and 1004-0012, respectively. The information is being collected to permit the authorized officer to determine if disposition of Federally-owned mineral interests should be made and to determine if disposition of public lands should be made for recreation and public purposes. This information will be used to make these determinations. A response is required to obtain a benefit.

2. The authority citation for part 2720 continues to read:

Authority: Secs. 209 and 310 of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

§ 2720.0-5 [Amended]

3. Section 2720.0-5 is amended by adding a new paragraph (d) to read:

(d) Proof of ownership means evidence of title acceptable in local realty practice by attorneys and title examiners and may include a current title attorney's opinon, based on a current abstract of title prepared by a bonded title insurance or title abstract company doing business in the locale where the lands are located.

4. A new section 2720.0-6 is added to read:

§ 2720.0-6 Policy.

As required by the Federal Land Policy and Management Act, conveyance of federally reserved mineral interest shall be made only upon a determination of no know value or if it can be clearly demonstrated that the mineral reservation is interfering with or precluding appropriate nonmineral development of the lands and that nonmineral development is a more beneficial use than mineral development. Allegation, hypothesis or speculation that such conditions could or may exist at some future time shall not be sufficient basis for conveyance. Failure to establish by convincing factual evidence that the requisite conditions of interference or preclusion presently exist, and that nonmineral development is a more beneficial use, shall result in the rejection of an application.

§ 2720.1-1 [Amended]

5. Section 2720.1-1 is amended by designating the introductory text as paragraph (a), redesignating the existing paragraphs (a) and (b) as paragraphs (a)(1) and (2) and adding a new paragraph (b) to read:

(b) Publication in the **Federal Register** of a notice of the filing of an application under this part shall segregate the mineral interests owned by the United States in the public lands covered by the application to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either

upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or 2 years from the date of filing of the application which ever occurs first.

§ 2720.1-2 [Amended]

6. Section 2720.1-2(d)(3) is amended by removing the phrase "to the applicant; and" at the end thereof and replacing it with the phase "and a showing of ownership in the applicant, with supporting survey evidence acceptable to the authorized officer, which may consist of a metes and bounds survey prepard and certified by a civil engineer or land surveyor licensed under the laws of the State in which the lands are located; and".

§ 2720.1-3 [Amended]

7. Section 2720.1-3 is amended by:

A. Amending paragraph (b)(2) by removing from where it appears in the first sentence thereof the phrase "after he has obtained the approval of the U.S. Geological Survey" and by removing from where it appears in the second sentence thereof the phrase "locatable and saleable minerals prepared by the Bureau of Land Management and mineral resources evaluation reports on leasable minerals prepared by the U.S. Geological Survey" and replace it with the phrase "minerals prepared by the Bureau of Land Management";

B. Amending paragraph (c) by removing from where it appears the phrase "after having obtained the approval of the U.S. Geological Survey";

C. Amending paragraph (d) by removing from where it appears the phrase", with the approval of the U.S. Geological Survey,"; and

D. Amending paragraph (e) by removing from where it appears in the first sentence the phrase", after the authorized officer has obtained the approval of the U.S. Geological Survey", by removing from where it appears in seventh sentence the phrase "and with the approval of the plan of operations by the U.S. Geological Survey" and by also removing the phrase "and the U.S. Geological Survey", and by removing from where it appears in the eleventh sentence the phrase "leasable mineral resources to the U.S. Geological Survey and that needed for determination of the economic value of locatable and salable mineral resources" and replace it with the phrase "mineral resources".

[FR Doc. 86-6102 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 51180-5180]

Fishery Conservation and Management; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the reapportionment of amounts of pollock apportioned to domestic annual processing (DAP) and reserve amounts of flounders and the "other species" category to the total allowable level of foreign fishing (TALFF) under provisions of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This action is necessary to provide sufficient bycatch for the foreign longline fishery on Pacific cod. It is intended as a management measure that promotes full utilization of Alaska groundfish.

DATES: This notice is effective March 17, 1986. Comments on this action are invited until April 1, 1986.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP at § 672.20(c) authorize the apportionment of surplus amounts of the reserve and the domestic annual harvest (DAH) to TALFF if the Director, Alaska Region, NMFS (Regional Director), after consulting with the North Pacific Fishery Management Council (Council), has determined that these amounts will not be harvested by domestic fishermen during the remainder of the year. Interim initial specifications for Gulf of Alaska groundfish (51 FR 956, January 9, 1986) were modified later (51 FR 5198, February 12, 1986), and pollock reserves were reapportioned to joint venture processing (JVP) by another action (51 FR 7446, March 4, 1986). DAP and JVP together comprise TALFF.

The Regional Director has determined that the current TALFF specifications of pollock and flounders in the Western and Central areas in the Gulf of Alaska and "other species" Gulf-wide are insufficient to provide appropriate bycatch amounts for the Pacific cod TALFFs in the Western and Central areas, and that it is necessary immediately to increase those amounts to avoid disruption to the foreign fishery. He also has determined that the amounts to be reapportioned from DAP and reserves will not be taken by U.S. fishermen. Consequently, 100 metric tons (mt) of pollock in the Western/Central area is reapportioned from DAP to TALFF, and 40 mt of flounders in the Western area, 10 mt of flounders in the Central area, and 100 mt of "other species" Gulf-wide are reapportioned from their respective reserves to TALFF.

TABLE 1.—GULF OF ALASKA REAPPORTIONMENT FROM DAH AND RESERVE TO TALFF. (FIGURES ARE IN METRIC TONS) DAH=DAP+JVP.

Species/regulatory area	Current	This action	Revised
Pollock:			
Western/Central			
(OY=305,000)			
Reserve	0	0	0
TALFF	40	+100	140
DAH	304,960	−100	304,860
DAP	201,960	−100	201,860
JVP	103,000	0	103,000
Flounders:			
Western			
(OY=10,400)			
Reserve	2,020	−40	1,980
TALFF	60	+40	100
DAH	8,320	0	8,320
DAP	7,284	0	7,284
JVP	1,036	0	1,036
Central			
(OY=14,700)			
Reserve	2,920	−10	2,910
TALFF	10	+10	20
DAH	11,770	0	11,770
DAP	10,686	0	10,686
JVP	1,084	0	1,084
Other species:			
Gulf-wide			
(OY=22,460)			
Reserve	4,312	−100	4,212
TALFF	180	+100	280
DAH	17,968	0	17,968
DAP	9,074	0	9,074
JVP	8,894	0	8,894

Classification

This action is taken under 50 CFR Part 672 and complies with Executive Order 12291.

In view of the need to avoid disruption of domestic fisheries, NOAA has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 17, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-6095 Filed 3-17-86; 2:02 pm]

BILLING CODE 3510-22-M

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50 CFR Part 642

[Docket No. 50587-6042]

Fishery Conservation and Management; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; change in total allowable catch, permit requirements, and bag limits for the Atlantic migratory group of king mackerel.

SUMMARY: The Secretary of Commerce issues a notice of changes in the total allowable catch (TAC), permitting requirements, and bag limits for the Atlantic migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. This notice reduces TAC and allocations for Atlantic migratory group king mackerel based on recent catch data, requires permits for commercial vessels, and bag limits for recreational fishermen. The intended effects are to protect the Atlantic migratory group of king mackerel and still allow catches by the important recreational and commercial fisheries that are dependent on this species and to implement a permit requiremet for commercial vessels for the purpose of improved management.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The king mackerel fishery is regulated under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) and final regulations (50 CFR Part 642). An amendment to the FMP (Amendment 1) was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34840, August 28, 1985). On January 8, 1986 (51 FR 769) a notice of preliminary changes in the total allowable catch, permitting requirements, and bag limits for the Atlantic migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the FMP was published for public comment. The comment period ended January 23, 1986.

The preamble to the preliminary notice contained a description of the need and rationale for implementing the changes in TAC, permitting requirements, and bag limits. These discussions are not repeated here.

Comments and Responses

Seventeen comments on the preliminary notice were received from seven commenters including fishermen, a seafood technologist, a recreational fishing organization, a marina operator, and a boat manufacturer.

Sale of Recreational Catches

A recreational fishing organization and a seafood technologist stated that recreational fishermen should not be allowed to sell their catch because they cannot ensure a quality product since they are either unfamiliar with proper storage techniques or unable to adequately care for their catch. Both commenters also stated that allowing the sale of recreational catches encourages recreational fishermen to compete with commercial fishermen for the fish and market. NOAA does not agree. Purchasers of the catch determine the quality, thus fishermen with less than adequate quality fish will be unable to sell their catch. The bag limit on recreational fishermen should prevent any significant competition with the unrestricted catch of an individual permitted to fish under the commercial quota.

Quotas and Allocations

A recreational fishing organization stated that the 18 percent reduction in total allowable catch of the Atlantic migratory group was insufficient to prevent the collapse of the resource because the best available scientific information was not used. NOAA does not agree. NOAA acknowledges there are data deficiencies, but concludes that the Councils used the best scientific information available. Allowable catches will be adjusted annually, on a pre-season basis, as additional information is gathered.

One commenter opposed any restrictions because he did not believe that the Councils' decisions are sound and based on the best scientific information available. NOAA disagrees. As stated above, the Councils utilized the best scientific data available.

Two commenters opposed quotas and allocations because of negative effects on tournaments. One commenter suggested a special concession for major tournaments. The Councils fully considered the impact of the allocations and quotas on tournaments and determined that tournament participants must share the burden for the conservation of king mackerel. NOAA agrees with the Councils' decision.

Bag Limits

One recreational fisherman questioned whether a size limit rather than a bag limit would achieve the same purpose. The Councils considered the advantages and disadvantages associated with size and bag limits. Since king mackerel are migratory, the Councils selected the bag limit because this allows the residents of different States to participate in this fishery in a fair and equitable manner. A size limit favors the areas where the larger fish occur during migration. NOAA agrees with the Councils' decision in selecting the bag limit.

One recreational fisherman questioned how the bag limit will be enforced. Based on comments from Federal and State law enforcement personnel, the Councils concluded that the bag limit was enforceable. NOAA also concluded that this measure was enforceable. The bag limit will be enforced by Federal agencies such as the U.S. Coast Guard and National Marine Fisheries Service and by State agencies through Federal/State cooperative agreements.

One recreational fisherman questioned whether any government body could unilaterally impose such a rule without public participation in the rule-making process. The Councils that developed these measures are composed of representatives from the coastal States' governments, the recreational and commercial fishing communities, and the Federal government. As required by the Magnuson Act, the Councils obtained public participation through fourteen public hearings held on Amendment 1 under which this notice action has been developed. During these hearings, the Councils solicited public comments on the use of bag limits for the recreational fishery in the area of the Atlantic migratory group. The public had opportunity also to comment during the 15-day public review period for this notice action that ended January 23, 1986.

A recreational fisherman inquired as to why there was no mention of restrictions on the west coast of Florida (including the Keys) and the Gulf of Mexico. This notice action is applicable only to the Atlantic migratory group. In Amendment 1, the Councils previously reviewed the status of the Gulf of Mexico king mackerel migratory group and concluded that this group is overfished. As a result the total allowable catch was reduced by 22 percent.

A recreational fisherman did not believe that the recreational sector could catch enough king mackerel to overfish the Atlantic migratory group and therefore, should not be included with commercial net vessels. A sport fishing organization recommended that the taking of king mackerel be restricted to hook-and-line commercial and rod and reel recreational fishermen. Historically, the recreational and commercial sectors have taken 62.9 and 37.1 percent, respectively, of the total harvest. The Councils reviewed this information and concluded that both sectors must be managed to prevent overfishing of the Atlantic group. NOAA agrees with the Council's decision.

A recreational fisherman inquired as to the commercial quota amount, the identity of the enforcing agency, and the foreign catch inside the fishery conservation zone (FCZ). The Councils reviewed the best available scientific information and set the commercial quota at 3.59 million pounds as measured by the commercial sales reported by dealers. The quota will be enforced by NMFS, the U.S. Coast Guard, and State agencies through the Federal/State cooperative agreements. Since the domestic sectors catch the entire optimum yield, there is no surplus available for foreign fishing. Any foreign vessel fishing for king mackerel in the FCZ is in violation of the Magnuson Act. Furthermore, such violation is unlikely since all foreign vessels fishing in the FCZ must have a NMFS observer aboard. NOAA agrees with the Councils' decision regarding the commercial quotas.

Changes From the Preliminary Notice

Section 642.4

Paragraph (b) is revised to allow commercial king mackerel fishermen to submit one application for permits to fish either or both the Atlantic migratory group and the Gulf migratory group. This will lessen the paperwork burden on fishermen. Permits for fishing the two migratory groups will be issued during the two months prior to the start of the respective migratory groups' fishing year.

Paragraph (g) is modified to require that a copy of the executed (signed) bill of sale be available for inspection aboard a newly purchased permitted vessel while the new owner is awaiting issuance of a new permit. This will assist in enforcement of the permitting requirement under paragraph (a) and reduce the possibility for inconvenience to the vessel owner in the event he is inspected prior to receipt of his new permit.

Section 642.7

Paragraph (a)(2) is revised by deleting the reference to § 642.22 since closures under this section are addressed in other paragraphs of § 642.7. Paragraphs (a)(17), (19), and (20) are modified to reflect the amended designations for paragraphs (c), (d), and (e) of § 642.21. Paragraph (a)(28) is added to clarify that king mackerel harvested by recreational fishermen may not be sold after closure of the respective king mackerel group allocation or quota under § 642.21. Paragraphs (a)(29) and (30) are added for application of paragraphs at § 642.28 (e) and (f).

Section 642.24

Paragraph (c) is corrected by changing the word "abroad" to aboard" wherever it occurs in the paragraph.

Section 642.28

Paragraph (c) is revised for clarification and the reference to persons fishing under the bag limit selling their fish has been deleted. Paragraph (d) is added to address the selling of king mackerel harvested under the bag limit.

Paragraph (e) is added to clarify that fishermen may not combine the bag and possession limits applicable to the FCZ and State waters.

Paragraph (f) is added to identify the operator of a vessel as the person responsible for the cumulative bag limit of king mackerel applicable to the vessel. This conforms with the responsibilities of vessel operators described under § 642.2 Definitions.

Changes to the Permit Application Process

Due to procedural delays, applications for 1986–1987 commercial fishing permits to fish the Atlantic migratory group of king mackerel or to fish the Atlantic and Gulf migratory groups of king mackerel will be received until May 19, 1986. The Regional Director or his designee will issue a 1986–1987 commercial fishing permit to fish Atlantic migratory group king mackerel, after a permit application is submitted as specified above. The Atlantic migratory group king mackerel 1986–1987 fishing year will still begin April 1, 1986. Commercial fisherman may fish commercially for Atlantic migratory group king mackerel without a permit during the permit application period, ending May 19, 1986.

Other Matters

This action is taken under the authority of 50 CFR 642.27 and is taken in compliance with Executive Order 12291. This action is covered by the supplemental regulatory impact review and supplemental regulatory flexibility analysis which concluded that the authorizing regulations could have a significant economic impact on a substantial number of small entities.

This rule contains a collection of information requirement subject to the Paperwork Reductions Act. The collection of this information has been approved by the office of Management and Budget, OMB Control Number 0648–0097.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 17, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is revised as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. In Part 642, the Table of Contents is amended by revising the heading for § 642.21 from "Quotas" to "Quotas and allocations".

3. Section 642.2 is amended by revising the definition of "Charter vessel" to read as follows:

§ 642.2 Definitions.

* * * * *

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. Charter vessels with commercial permits to fish Atlantic migratory group king mackerel are under charter when there are more

than three (3) persons aboard including captain and crew.

* * * * *

4. Section 642.4 is amended by revising paragraphs (a), (b) introductory text, (b)(7), (d), (f) and (g), and adding a new paragraph (b)(8) to read as follows:

§ 642.4 Permits and fees.

(a) *Applicability* (1) Owners or operators of fishing vessels which fish for king mackerel under the commercial quotas (§ 642.21) are required to obtain an annual vessel permit.

(2) Owners or operators of charter vessels and headboats that fish for Gulf migratory group king mackerel are excluded from eligibility for a vessel permit unless they will charter only in the Atlantic migratory group area.

(3) Owners or operators of charter vessels may obtain a permit to fish Atlantic migratory group king mackerel provided they adhere to bag limits while under charter.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. Applications for permits to fish both the Atlantic and Gulf migratory groups of king mackerel or for a permit to fish only the Atlantic migratory group of king mackerel must be submitted to the Regional Director or his designee within 60 days prior to April 1 each year. Applications for permits to fish only the Gulf migratory group of king mackerel must be submitted to the Regional Director or his designee 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

* * * * *

(7) Any other information concerning vessel, gear characteristics and fishing area requested by the Regional Director; and

(8) The migratory group of king mackerel that will be fished.

* * * * *

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during February and March of each year to fish Atlantic migratory group king mackerel and May and June of each year to fish Gulf migratory group king mackerel, after permit applications are submitted according to paragraph (b) of this section. The Regional Director may issue permits at other times to newly registered or documented vessels, or in case of demonstrated hardship. Until the permit is received, fishermen must comply with the bag limits under § 642.28 and have a copy of an executed bill of sale per § 642.4(g).

* * * * *

(f) *Duration.* A permit is valid only for the period of the year for which it is issued (July 1–June 30 for the Gulf migratory group and April 1–March 31 for the Atlantic migratory group) unless revoked or suspended pursuant to Subpart D of 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf or Atlantic migratory groups' quotas must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceding owner's permit until a new permit has been issued, but for a period not to exceed 60 days from date of purchase. Until a new permit is received, a copy of the executed (signed) bill of sale must be aboard the vessel and available for inspection by an authorized officer.

* * * * *

5. Section 642.6 is amended by revising paragraph (a) introductory text to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in fishing for king mackerel under a commercial quota and the permit specified in § 642.4 must—

* * * * *

6. Section 642.7 is amended by revising existing paragraphs (a) (2), (19), (20), (21), (22), and (25); revising the reference that reads "§ 642.21(b)" to "§ 642.21(c)"in paragraph (a)(17); changing the period at the end of paragraph (a)(27) to a semicolon and adding new paragraphs (a) (28), (29), (30), and (31), to read as follows:

§ 642.7 [Amended]

(a) * * *

(2) Fish for king or Spanish mackerel in violation of any area closures or season closures as specified in § 642.26;

* * * * *

(19) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21(c) and (e) have been reached and closure has been invoked as specified in § 642.22 (Table 2);

(20) Fish for or have in possession aboard Spanish mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(d) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Land, consume at sea, sell, or have in possession at sea or at time of landing king mackerel in excess of the bag limits specified in § 642.28 except as provided for under § 642.21;

(22) Fish for king mackerel from the Gulf and Atlantic migratory groups in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

* * * * *

(25) Land king mackerel in other than an identifiable form as specified in § 642.28(b);

* * * * *

(28) Possess king mackerel harvested from the FCZ under the recreational allocation set forth at § 642.21(b) after closure has been invoked as specified in § 642.22;

(29) Sell king mackerel harvested under the recreational bag limits in § 642.28(a) except as specified in § 642.28(d);

(30) Combine the bag and possession limits for king mackerel under § 642.28(a) with bag and possession limits applicable to State waters as specified under § 642.28(e); or

(31) Operate a vessel that fishes king mackerel in the FCZ with king mackerel aboard in excess of the cummulative bag limit, based on the number of persons aboard, applicable to the vessel, as specified in § 642.28(f).

* * * * *

7. Section 642.21 is amended by revising the last two sentences of paragraph (a), redesignating existing paragraphs (b) through (e) as (c), (d), (e) and (i), and adding a new paragraph (b) to read as follows:

§ 642.21 Quotas and allocations.

(a) *Commercial quotas for king mackerel.* * * * The commercial allocation for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Recreational allocations for king mackerel.* The recreational allocation for the Atlantic migratory group of king mackerel is 6.09 million pounds per fishing year.

* * * * *

8. Section 642.22 is amended by designating the existing paragraph as (a), amending paragraph (a) by inserting the reference "§ 652.21(a), (c), and (e)" in place of "§ 642.21" throughout the paragraph, and adding a new paragraph (b) as follows:

§ 624.22 Closures.

* * * * *

(b) The Secretary, by publication of a notice in the **Federal Register**, will close the recreational fishery for king mackerel of the Atlantic migratory group when the allocation for that group under § 642.21(b) is reached or is projected to be reached.

§ 642.24 [Amended]

9. In § 642.24, paragraph (c) is amended by changing the word "abroad" to "aboard" wherever it occurs.

10. Section 642.28 is revised to read as follows:

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limits.* Persons who fish for king mackerel from the Gulf or Atlantic migratory group (see Figure 2) in the FCZ, except those fishing under the permits and quotas specified in § 642.4; § 642.21(a); and § 642.24(c), are limited to the following:

(1) *Gulf migratory group.* (i) Possessing three (3) king mackerel per person per trip, excluding the captain and crew or possessing two (2) king mackerel per person per trip, including the captain and crew, whichever is the greater, when fishing from a charter vessel.

(ii) Possessing two (2) king mackerel per person per trip when fishing from other vessels.

(2) *Atlantic migratory group.* Possessing three (3) king mackerel per person per trip.

(b) All king mackerel must be landed in an identifiable form as to number and species (with the understanding that head and tail can be removed).

(c) (1) After a closure under § 642.22(a) is invoked for the quota(s) (specified in § 642.21(a)) for either or both Gulf allocation zone(s), vessels permitted under § 642.4 may not fish for Gulf migratory group king mackerel in that zone(s) under the bag limit specified in paragraph (a) of this section.

(2) Charter vessels permitted to fish under the commercial quota of Atlantic migratory group king mackerel may fish under the bag limit specified in (a)(2) of this section provided they are under charter (more than three (3) persons aboard including captain and crew) and the recreational fishing allocation for Atlantic migratory group king mackerel under § 642.21(b) has not been closed under § 642.22(b).

(d) Recreational fishermen may sell their catch of Gulf and Atlantic migratory group king mackerel taken under the bag limits in paragraph (a) of this section unless the respective king mackerel migratory group allocation or quota in § 642.21 has been closed under § 642.22. King mackerel sold by recreational fishermen are counted against the appropriate commerical allocation or quota in § 642.21(a) for the area where they are in effect.

(e) Persons who fish for king mackerel in the FCZ may not combine the bag and possession limits of this part with any bag or possession limits applicable to State waters.

(f) The operator of a vessel that fishes for king mackerel in the FCZ is responsible for the cumulative bag limit, based on number of persons aboard, applicable to that vessel.

11. Part 642 is amended by designating Tables 1 and 2 and Figures 1 through 3 as Appendix A to the part. Table 2 is amended by revising the "King Mackerel—Atlantic" line and adding a new "King Mackerel—Atlantic Recreational" line to read as follows:

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]

Migratory group(s)	Fishing year	Gear	Allocation zone	Fishing year quota/TAC (million lbs)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic Commercial	1 Apr-31 Mar	All types	Entire range [2]	3.590	Sales from migratory group are projected to reach quota.
Atlantic Recreational	1 Apr-31 Mar	All types	Entire range [2]	6.090	Catches from migratory group are projected to reach allocation.

[1] See Figure 2 for dilineation of migratory group ranges and allocation zones.
[2] The range of migratory groups varies by season (§ 642.29)-See Figure 2.

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Proposed Rules

Federal Register
Vol. 51, No. 54
Thursday, March 20, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO-99-A5]

Pears Grown in Oregon, Washington, and California; Marketing Agreement and Order

AGENCY: Agricultural Marketing Service USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on a proposed amendment of the marketing agreement and Marketing Order 927 (7 CFR Part 927), covering Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears (winter pears) grown in Oregon, Washington, and California. The proposal would revise the size and composition of the Control Committee, limit the tenure of Control Committee members, change the varieties of winter pears covered under the order, authorize public advisors, add authority for research and development programs on a varietal basis, provide for periodic referenda on the order, and provide for certain other minor changes intended to improve program administration.

DATE: Written exceptions to this recommended decision must be received by April 4, 1986.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, DC 20250. Two copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: James Wendland, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone 202-447-5053.

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.

Small businesses. The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons were invited to present evidence at a hearing on the probable regulatory and informational impact of the proposed rule on small businesses.

During the fiscal year ending June 30, 1985, 96 handlers regulated under M.O. 927 handled winter pears for fresh market with an estimated crop value of $65.5 million. The average value per handler was approximately $680,000. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of winter pears would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 927 are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses.

Further, while the amendment recommended herein would impose some requirements on affected small businesses and the number of such may be substantial, and added burden should not be significant in light of the potential benefits that should be derived by such small businesses.

Most of the substantive proposals would not have a significant impact on small businesses' recordkeeping and reporting burdens. One of the proposals in this rulemaking would authorize the funding of promotional programs on a varietal basis. Because this would provide added flexibility in the collection and use of assessment funds, various segments of the industry would be able to focus more clearly on their research and promotion goals and to more effectively pool their resources to mount promotional campaigns. Small businesses could especially benefit as they are the least likely to be in a position to initiate and maintain such marketing expansion projects individually.

The overall impact of the proposed amendment upon other small businesses is more difficult to evaluate. Some such businesses, including retail food stores, restaurants, and others that sell winter pears to the public in various forms, could experience slightly increased costs due to potentially higher winter pear price levels under the amendment. However, if an increased volume of winter pears were to be shipped as a result of varietal promotional efforts, greater returns to growers, handlers and other marketers could result. This might offset potential promotional expenses enough to benefit all groups, including consumers. However the magnitude of such added costs is difficult to quantify and is speculative. Moreover, these potential added costs could well be counterbalanced by the advantages to small businesses that are winter pear growers who will benefit from the proposed amendment.

Based on the foregoing, it is hereby determined and certified that this action will not have a significant economic impact on a substantial number of small entities. A comment period of 15 days is provided. A longer period would unnecessarily delay the amendatory process and prevent the proposed changes from being implemented by the industry in time for the 1986 marketing season.

Preliminary statement: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of marketing agreement and Order No. 927 regulating the handling of winter pears grown in Oregon, Washington, and California, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from William J. Doyle whose address is listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

On June 20, 1985, a public hearing was held on proposed further amendment the marketing agreement, as amended, and Order No. 927, as amended. The hearing was held in Portland, Oregon, pursuant to the provisions of the act and the applicable rules of practice. Notice of this hearing was published in the **Federal Register** on June 11, 1985 (50 FR 24531). The notice of hearing contained a proposal by the Winter Pear Control Committee, which operates under the order, to amend the order to authorize varietal promotion and paid advertising, revise the size and composition of the Control Committee, change the varieties of winter pears included under the order, limit the tenure of committee members, provide for periodic continuance referenda, and make certain minor administrative changes. The notice included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, USDA, authorizing it to make any necessary conforming changes.

Material issues: The material issues presented on the record of the hearing are: (1) Whether the Control Committee should be authorized under the order to engage in marketing promotion and paid advertising to promote the marketing, distribution and consumption of winter pears by types or varieties; (2) whether changes in the size, composition and voting procedures of the Control Committee should be authorized; (3) whether the order should be amended to change the varieties and subvarieties of winter pears covered; (4) whether a limit should be established on the tenure of Control Committee members; (5) whether periodic continuance referenda should be held on the order; and (6) whether certain minor administrative changes and conforming changes should be made to the order if any of these proposals were to become effective.

Findings and conclusions: The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and the record of it, are as follows:

(1) The order should be amended, as hereinafter set forth, to include authority for marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears on the basis of types or varieties. Such authority is provided under section 8c(6)(I) of the act.

Authority for generic marketing promotion and paid advertising of winter pears was added under the order on November 28, 1984. Certain testimony during that rulemaking proceeding also favored the promotion of winter pears on a varietal basis. However, this was inadequately supported and the order, as amended, did not provide for promotion on a varietal basis. On March 22, 1985, the industry requested that a public hearing be held to consider amending the order to add varietal promotion authority.

The hearing record indicates that the proposal would effectuate the declared purpose of the act by making the program more responsive to industry marketing needs. Varietal promotion authority would permit producers and handlers of different winter pear varieties to pursue marketing strategies tailored specifically to the marketing conditions that each specific variety or industry group faces. This could be desirable if new cultivars are developed and come into commercial production, since producers of these hybrids or crosses could fund projects solely directed toward informing consumers of their qualities and availability. Similarly if a particular variety were especially plentiful during a particular season, producers of that variety could develop and fund a program directed solely toward marketing this type of pear. In essence the proposed authority provides flexibility in marketing promotion and advertising under the order.

To effectuate this authority §§ 927.41 and 927.52 of the order should be amended to permit supplemental assessments based upon specific winter pear varieties. As proposed in the notice such supplemental assessments would be authorized whenever 80 percent of the votes cast by committee members on behalf of a variety support such levies. Hearing evidence supports supplemental assessment authority but not the requirement in the notice that 80 percent of all votes cast must be in support of an assessment levy for it to become effective. Witnesses testified that obtaining an 80 percent majority could be difficult, because even among producers of the same variety members may hold contrasting views on the need for supplemental promotions. Testimony indicated that recommendations for supplemental assessments should require 75 percent of the applicable number of votes of that variety to be valid. Such percentage is reasonable and should assure that adequate support exists for the imposition of a supplemental assessment on handlers of that variety. Evidence in the record also makes clear that handlers of any winter pear varieties or subvarieties covered under the order would be required to pay the base assessment rate recommended by the Control Committee and set by the Secretary, regardless of whether a supplemental assessment rate is subsequently levied on a particular variety.

Another revision proposed to effectuate varietal promotion authority is to amend § 927.47 to specify that funds spent for a particular variety of pears should approximate funds collected for the variety. Testimony indicates that this would safeguard promotion funds by ensuring that funds from assessments on one variety do not subsidize projects of other varieties. However, testimony indicates that the language should be strengthened further to make this mandatory rather than permissive as contained in the proposal. This would provide an additional degree of protection against the inappropriate use of funds. It is intended that the level of promotional expenditures for each varietal type would be required to be approximately the same as the assessment revenue collected for that varietal type of winter pears, including any unspent revenue from prior years. In addition, supplemental assessment income which remains unspent at the end of a season may be set aside in a reserve fund for the applicable variety, to be spent for promoting that variety in future seasons.

Another revision would modify § 927.52 to provide Control Committee members a procedural basis to vote to recommend supplemental varietal assessments. As proposed, committee decisions on the establishment or modification of a supplemental rate of assessment for an individual variety of pears would be made in the same manner as are decisions pertaining to grade, size, and quality recommendations. A vote would be allocated to each member and an additional volume vote would be allocated to each member on the basis of each 25,000 boxes of a particular variety that were marketed from the member's district.

One witness pointed out that certain varieties proposed for inclusion under the order (Seckels and Forelles) are produced in such small quantities that such a method of voting would result in unrepresentative tallies. For example, because no district currently produces and markets over 25,000 boxes of Forelles annually, each district would be entitled to one vote, even though only two districts account for most of the production. That witness proposed an alternative method of voting for Seckel and Forelles Varieties which allocates an additional vote for each 2,500 boxes of production in each district. This method would ensure that each district's vote was proportional to its production of Seckels and Forelles and is recommended for inclusion in the proposed amendment. Testimony

indicates that this alternative basis for volume votes is intended to be used for varietal votes on supplemental assessments, however, it would also be appropriate to use this method for votes on other varietal matters, including grade and size regulation recommendations. It is recognized, however, that the method of computing votes, including the proposed alternative method, does not provide flexibility in addressing changing conditions, especially any growth or decline in production of any winter pear varieties. Because such change in the industry is likely, it would be inappropriate to establish procedural methods for computing the votes for specified winter pear varieties that could become obsolete within a few years. Therefore, the committee should be authorized to authorized to consider other methods of allocating volume votes. One suggestion offered at the hearing would base votes on the percentage of production in a district compared to the whole production area. Other suggestions may also have merit. Of course, the committee may conclude that the proposed two-tiered system would be most practical at present. In any event, based upon the testimony presented at the hearing, the control committee should be provided additional authority to recommend to the Secretary alternative procedures to allocate each district additional votes based upon production, to be considered and implemented by means of informal rulemaking.

(2) The order should be amended, as hereinafter set forth, to authorize changes in the number of producer/handler members, the allocation of committee membership by district and the voting procedures of the Control Committee.

Testimony indicates that winter pear production has shifted over the years. California production has declined to less than three percent of the total of Oregon, Washington and California. Conversely production in the Wenatchee and Mid-Columbia districts has increased to the extent that each now account for about a third of total production. The current order entitles each district to one producer member and one handler member on the Control Committee. As a result the committee has become less representative of the industry in recent years.

The proposal would combine the two California districts, the Placerville District and the Santa Clara District, into one, designated as the California District, which would encompass the entire State of California. As stated above, winter pear production in California has declined significantly, and producers and handlers are similarly fewer in number. Because of this, and testimony which indicates that winter pear producers and handlers throughout California have similar concerns with regard to marketing order issues, one Control Committee producer member and one handler member from the State would be able to take positions representative of California as a whole.

The proposal would also enlarge the Control Committee to 14 member positions (from the current 12). The Medford, Yakima and California districts would each be allocated one producer and one handler position, and the Wenatchee and Mid-Columbia districts would each be allocated two producer and two handler positions. This would apportion membership on the committee as closely as possible to average winter pear production in each district and yet ensure each district representation on the committee.

Testimony indicates that committee quorum and voting procedures should also be changed to reflect the larger control committee size. It is appropriate that ten of the 14 members be present to constitute a quorum for conducting committee business. This is nearly equivalent to the present ratio, where nine member quorum is required of a twelve member committee.

The order currently provides in § 927.33 that decisions of the Control Committee shall be made by a majority of those voting, but not less than 7 concurring votes. As proposed in the hearing notice, decisions would be made by the concurring votes of 80 percent of those voting, but not less than 10 concurring votes. A substantial amount of testimony indicates that these requirements regarding all decisions except those made pursuant to § 927.50, might be too restrictive and would hamper committee operations. As no testimony was received regarding the need for a change in appropriate level of concurrence which should be required for decisions made pursuant to § 927.50, this provision remains unchanged. On other decisions, most witnesses testified that the concurring votes of 75 percent of those voting should be required. Further, reducing by five percent, to 75 percent, the concurrence necessary for committee action could potentially change the outcome of a vote when 12, 13 or 14 members (or alternates acting as members) are voting. For example, if an 80 percent concurrence were required in voting, three voting members or alternates could veto all actions. While all members are likely to continue to serve responsibly, it seems prudent and in the interests of effective decisionmaking to require that only 75 percent of those voting must concur in committee decisions.

The second requirement for committee decisions proposed, that of ten concurring votes, was opposed by a large number of those testifying at the hearing. These witnesses noted that this provision would require a unanimous affirmative vote for action if only ten members or alternates attended a meeting. Evidence suggests that this is an unreasonable requirement. Thus, no minimum number of concurring votes is specified.

(3) The order should be amended, as hereinafter set forth, to authorize changes in the varieties and subvarieties covered under the program.

Presently § 927.4 which defines pears under the order, includes Beurre Easter and Beurre Clairgeau varieties. However, testimony indicates that these varieties have been declining in commercial importance for many years, and currently have minimal commercial value relative to other varieties. Therefore, these varieties should be deleted from coverage under the order.

Testimony indicates that production of two other varieties, Forelle and Seckel, has become commercially significant within the States of Oregon and Washington and should be added to the list of varieties subject to regulation under the order. Additionally, producers of these varieties have indicated interest in developing and funding research and development projects. Forelle and Seckel variety pears grown in California are presently covered under Marketing Order No. 917, which is applicable to pears, peaches and plums grown in California, and therefore pears of these two varieties grown in California should not be included under Marketing Order 927.

Testimony also indicates that similar gradual changes in the relative prominence or commercial importance of various winter pear varieties is likely to occur in the future. In the event such changes occur the Control Committee and the producers of the affected varieties may elect to be included, or perhaps excluded, from coverage under the order. As proposed in the notice, effectuating such a change in coverage would require a formal rulemaking proceeding. It would be desirable to accomplish this without such formal rulemaking in the interests of time and expense, but only upon the recommendation of the control committee and the approval of the Secretary. It is also intended that

producers of the affected varieties be polled as to their preferences in such matters and that the results of each such poll be submitted to the Secretary before any action to change coverage is undertaken. Section 927.4 should therefore be changed accordingly. It is understood, however, that any newly added coverage of any varieties would be applicable only to fruit produced in the State of Oregon and Washington, because varieties produced in California, other than those enumerated under Order 927, are covered under Order 917.

Testimony also indicates that a new § 927.13 subvariety should be added to the order. Under this provision each new subvariety developed from a cross of fall and winter pears would be classified as to parentage to clarify whether it would be covered under the program. Further, each new subvariety coverded under the program would be classified under a varietal group for the purpose of votes conducted by the Control Committee on supplemental promotion funding. Since the commercial production of new varieties and subvarieties is likely to develop over a number of seasons, producers and the Control Committee would have ample opportunity to determine whether particular varieties or subvarieties would be covered under the program. Upon determination by the Control Committee pursuant to § 927.33 that a particular variety or subvariety should be covered, the committee would request approval of the Secretary. Upon such approval the committee would notify all producers and handlers.

As a conforming change the title of the order should be modified to read "Winter Pears Grown in Oregon, Washington and California." This title would more closely identify the intent and coverage of the order.

(4) The order should be amended, as hereinafter set forth, to change the terms of office of Control Committee members and to establish a limit on the tenure of Control Committee members.

Testimony indicates that changing the terms of office of Control Committee members and alternates to two years from the current one year and providing for staggered terms of office will improve administration of the program. Expanding the term of office should provide the opportunity for members and alternates to become more familar with order operations which should enhance their contributions to the administration of the order. By staggering the terms of committee positions, particularly those within a district, the industry is ensured that knowledgeable persons will always be on the committee in each district.

It is recommended that this be accomplished by dividing the industry into odd and even-numbered year groups, and § 927.27 should be amended to provide that seven committee members and their alternates shall be nominated in even-numbered years and seven members and their alternates be nominated in odd-numbered years. To effectuate this change, nominations in 1987 should select one half of the committee membership for a one-year term of office and the remaining membership for a two-year term of office.

A reasonable schedule to nominate committee members and their respective alternates in 1987 would be as follows:

District	Position	Term
Medford	Grower	2 years.
	Handler	1 year.
Hood River-White Salmon-Underwood	Grower	2 years.
	Grower	1 year.
	Handler	2 years.
	Handler	1 year.
Wenatchee	Grower	2 years.
	Grower	1 year.
	Handler	2 years.
	Handler	1 year.
Yakima	Grower	2 years.
	Handler	1 year.
California	Grower	2 years.
	Handler	1 year.

All nominations subsequent to the 1987 nominations would be for two-year terms of office.

In recognition of the Secretary's 1982 "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders," industry witnesses also testified in support of limiting the length of time that committee members may serve to three consecutive two-year terms. Testimony indicates that such a limitation on tenure could help bring additional persons into active roles in the administration of the program. A number of clarifications were made in the course of the hearing on how the provision would be administered. Testimony indicates that the limitation should not be applied retroactively, but rather it would apply to those selected to full terms after the provision became effective. Also the limitation is intended to apply only to members, not to alternates. Additionally, persons no longer eligible to serve as members could serve as alternates and could also serve as members again after they had not served in that capacity for two years. Testimony indicates, however, that the Secretary should retain the authority to exempt an individual from the tenure limitation if the position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve. Nonetheless it would seem clear that such an exception would be made only in special and unusual circumstances and should not be expected as a matter of course.

(5) The order should be amended, as hereinafter set forth, to require referenda to be held relative to continuance of the order within every six-year period.

The order provides that the Secretary shall terminate the program if a majority of all producers favor termination and such majority produced more than 50 percent of the winter pears for market. Since less than 50 percent of all growers usually participate in a referendum, it is difficult to determine producer support for termination of an order. In order to provide a basis for determining whether producers favor continuance of the order, a new paragraph (d) should be added to § 927.78 to authorize continuance referenda.

The results of such referenda should be based on the number of producers participating. Such requirements should be the same percentages set forth in section 8(c)(8) of the act with respect to producer approval of the issuance of a marketing agreement and order. This requires approval by two-thirds of the producers voting in the referendum or by producers who have produced two-thirds of the volume of production voted during a presentative period. This is an appropriate basis for ascertaining whether winter pear growers favor continuation of the program. In the event that the requisite majority of producers, by number or volume of production represented in the referendum, do not approve continuation of the order, the Secretary should consider termination of the order but would not be required to terminate. In evaluating the merits of termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the act. In this regard, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination and such majority produced more than 50 percent of the winter pears for market. To be effective, termination of the order should be announced on or before the

last day of a fiscal year. This date precedes the beginning of committee operations for a new fiscal year and is considered to be appropriate under the circumstances. Current paragraph (d) of § 927.78 should be redesignated as paragraph (e).

Hearing evidence supports this amendment to the order since it would provide winter pear producers with the opportunity periodically to indicate their support for or rejection of the order. Testimony indicates that such referenda would help to ensure that the program continues to be accountable to the producers. Such authority would also obligate producers to periodically evaluate their program and so involve them more closely in its operation.

(6) The order should be amended to authorize certain minor administrative and conforming changes, as hereinafter set forth.

Testimony supports a number of minor administrative changes proposed to improve administration of the program. None of these would result in changes in coverage or objectives of the program.

Testimony indicates that revising § 927.9 to authorize the Control Committee to recommend an alternative fiscal period to the Secretary could provide desirable flexibility. For example should payment or accounting practices change, it may be desirable to revise the fiscal period accordingly. This proposal would allow such a change, if approved by the Secretary, to be more simply accomplished through informal rulemaking in lieu of present authority, which would require formal rulemaking procedures.

Evidence indicates that § 927.26 should be amended to allow nominees to indicate in writing their willingness to serve on the Control Committee at the same time that they submit a statement of their qualifications for the position to the Secretary. Presently nominees are required to file written acceptance after selection by the Secretary. This proposal would reduce the paperwork and postage required in the selection of persons to the control committee.

Testimony also supports adding a new "§ 927.36 Public advisors" which provides specific authority to the Control Committee to appoint public advisors, define their duties, and set their compensation. Since this authority is already implied in § 927.32 (c) and (f), and since the Control Committee has already had the services and counsel of a nonindustry advisor for several years, this proposal merely clarifies the committee's authority.

Witnesses also testified that the Control Committee, with the approval of the Secretary, should be authorized to impose late payment and interest charges upon any handler who fails to pay an assessment within the time prescribed by the committee. This change is intended to encourage prompt payment of assessments. Testimony indicates that this is a good business practice and could help ensure that payment problems do not arise in the future. Provision for late payment and interest charges would allow the committee to defray additional costs incurred in preparing and mailing handler invoices for late assessment payments and interest charges on borrowed funds should borrowing become necessary to meet a shortfall in assessment income. Evidence also supports a related proposal, which would allow the committee to accept advance assessment payments from handlers prior to the commencement of shipments, which would then be credited to the handler's accounts. This would help to ensure that funds were available to the Control Committee to carry out desired activities. Witnesses testified that any advance payment of assessments would be entirely voluntary. Further, if it were determined by the Secretary to be permissible, the Control Committee might provide a monetary incentive to handlers to make such advance payments. Such payment discounts, if approved, would be available to all handlers on a pro rata basis.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed July 19, 1985, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing. None were filed during this period.

General findings. Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary and in addition to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings an determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The proposed marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as hereby proposed to be further amended, regulate the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, and Doyenne du Comice varieties of winter pears grown in the States of Oregon, Washington, and California, and other varieties of winter pears, including Forelle and Seckel, grown in the States of Oregon and Washington, in the same manner as, and are applicable only to persons in the respective classes of commerical and industry activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of said varieties of pears grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of said varieties of pears grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 927

Marketing agreement and order, Oregon, Washington, California, Pears, Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Forelle, and Seckel.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The authority citation for 7 CFR Part 927 continues to read as follows:

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

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

Proposal No. 1

Revise § 927.4 to read:

Section 927.4 Pears.

"Pears" means and includes any and all of the Beurre D'Anjou, Beurre Bosc, Winter Nelis, and Doyenne du Gomice varieties of pears grown in Oregon, Washington, and California and any other winter pear varieties or subvarieties that are recognized by the Control Committee and approved by the Secretary, including the Forelle and Seckel varieties, that are commercially grown in the States of Oregon and Washington.

Proposal No. 2

Revise § 927.9 to read:

Section 927.9 Fiscal period.

"Fiscal period" means the period beginning July 1 of any year and ending June 30 of the following year or such annual beginning and ending dates as may be approved by the Secretary pursuant to recommendations by the Control Committee.

Proposal No. 3

Amend § 927.11 by removing paragraph (f) and by revising paragraph (e) to read:

Section 927.11 District.

* * * * *

(e) California District shall include all of the State of California.

Proposal No. 4

Add a new § 927.13 to read:

Section 927.13 Subvariety.

"Subvariety" means and includes any mutation, sport, or other derivation of any of the varieties covered in § 927.4 which is recognized by the Control Committee and approved by the Secretary. Recognition of a subvariety by the Control Committee shall include classification within a varietal group for the purposes of votes conducted under § 927.52.

Proposal No. 5

Revise § 927.20 to read:

Section 927.20 Establishment and membership.

A Control Committee, consisting of 14 individual persons as its members, is hereby established to administer the terms and provisions of this subpart as specifically provided in §§ 927.20 through 927.35. There shall be two alternates, designated as the "first alternate" and the "second alternate," respectively, for each member of the committee. Seven members of the Control Committee and their respective alternates shall be growers of pears, and seven members and their respective alternates shall be handlers of pears. Each district shall be represented on the Control Committee by one grower member and one handler member except that the Hood River-White Salmon-Underwood District and the Wenatchee District shall be represented on the committee by two grower members and two handler members.

Proposal No. 6

Revise § 927.26 to read:

Section 927.26 Qualifications.

Any person prior to or within 15 days after selection as a member or as an alternate for a member of the Control Committee shall qualify by filing with the Secretary a written acceptance of the person's willingness to serve.

Proposal No. 7

Revise § 927.27 to read:

Section 927.27 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning July 1 and ending June 30: *Provided,* That the terms of office of one-half the initial members and alternates shall end June 30, 1988; and that beginning with the 1987–88 marketing year, no member shall serve more than three consecutive two-year terms unless specifically exempted by the Secretary. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each June 30.

Proposal No. 8

Revise paragraph (a) of § 927.33 to read:

Section 927.33 Procedure of Control Committee.

(a) Quorum and voting. A quorum at a meeting of the Control Committee shall consist of ten members, or alternates then serving in the place of any members. Except as otherwise provided in § 927.52, all decisions of the Control Committee at any meeting shall require the concurring vote of at least 75 percent of those members present, including alternates then serving in the place of any members.

* * * * *

Proposal No. 9

Add a new § 927.36 to read:

Section 927.36 Public advisors.

The Control Committee may appoint such public advisors as it deems appropriate and determine the compensation and define the duties of such advisors.

Proposal No. 10

Revise § 927.41 to read:

Section 947.41 *Assessments.*

(a) Assessments will be levied only upon the handler who first handles pears which subsequently are shipped from the State of Oregon, the State of Washington, or the State of California. Each handler shall pay, upon demand, assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and are likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) Based upon a recommendation of the Control Committee or other available data, the Secretary shall fix the rate of assessment that handlers shall pay on all pears handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a committee recommendation or other information that a different rate is necessary for all pears or for any varieties or subvarieties, the Secretary may modify a rate of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal year.

(c) The Control Committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Control Committee may impose an additional charge in the form of interest on such outstanding amount. The amount of such late payment charge and rate of interest, shall be prescribed by the Control Committee, with the aproval of the Secretary.

(d) In order to provide funds to carry out the functions of the Control Committee prior to commencement of shipments in any season, handlers may make advance payments of assessments, which advance payments shall be credited to such handlers and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of each variety of pears handled by such handlers during such season. Further, payment discounts may be authorized by the Control Committee upon the approval of the Secretary to handlers making such advance assessment payments.

Proposal No. 11

Revised § 927.47 to read:

Section 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to § 927.41. Expenditures for a particular variety of pears shall approximate the amount of assessments collected for that variety of pears.

Proposal No. 12

Revised § 927.52 to read:

Section 927.52 Prerequisites to committee recommendations.

(a) Decisions of the Control Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety of pears shall be made by an affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner hereinafter described in this section, of all committee members. Decisions of the Control Committee pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 80 percent of the applicable total number of votes, computed in the manner hereinafter prescribed in this section, of all committee members.

(b) With respect to a particular variety of pears, the applicable total number of votes shall be the aggregate of the votes allotted to the members of the committee in accordance with the following: Each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by such member; and such district vote shall be computed by the Control Committee as soon as practical after the beginning of each fiscal period on either (1) the basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped thereform during the immediately preceding three fiscal periods to destinations outside the State in which produced; or (2) such other basis as the Control Committee may recommend and the Secretary may approve. The votes so allotted to a member of the committe may be cast by such member on each recommendation relative to the variety of pears on which such votes were computed.

Proposal No. 13

Revise paragraphs (c) and (d) and add a new paragraph (e) to § 927.78 to read:

Section 927.78 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of the growers of pears who, during such fiscal period, have been engaged in the area in the production of pears for market: *Provided,* That such majority have produced for market during such period more than 50 percent of the volume of pears produced for market in the area; but such termination shall be effective only if announed on or before the last day of the then current fiscal year.

(d) The committee shall recommend to the Secretary within every six-year period beginning on the date this section becomes effective that a referendum be conducted to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this subpart at the end of any fiscal year in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of pears in the production area: *Provided,* That termination of the order shall be effective only if annonced on or before the last day of the then current fiscal year.

(e) The provisions of this part shall, in any event terminate whenever the provisions of the act authorizing them cease to be in effect.

Dated: March 12, 1986.

James C. Handley,

Administration.

[FR Doc. 86-6081 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Ch. X

[Docket Nos. AO-160-A64, etc.]

Milk Marketing Orders; Expedited Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A64
1001	New England	AO-14-A61
1002	New York-New Jersey	AO-71-A75
1006	Upper Florida	AO-356-A24
1007	Georgia	AO-366-A26
1011	Tennessee Valley	AO-251-A29
1012	Tampa Bay	AO-347-A27
1013	Southeastern Florida	AO-286-A34
1030	Chicago Regional	AO-361-A23
1032	Southern Illinois	AO-313-A34
1033	Ohio Valley	AO-166-A54
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A50
1040	Southern Michigan	AO-225-A37
1044	Michigan Upper Peninsula	AO-299-A24
1046	Louisville-Lexington-Evansville	AO-123-A55
1049	Indiana	AO-319-A34
1050	Central Illinois	AO-355-A23
1064	Greater Kansas City	AO-23-A56
1065	Nebraska-Western Iowa	AO-86-A43
1068	Upper Midwest	AO-178-A39
1075	Black Hills	AO-248-A19
1076	Eastern South Dakota	AO-260-A27
1079	Iowa	AO-295-A36
1093	Alabama-West Florida	AO-386-A5
1094	New Orleans-Mississippi	AO-103-A47
1096	Greater Louisiana	AO-257-A34
1097	Memphis	AO-219-A42
1098	Nashville	AO-184-A49
1099	Paducah	AO-183-A41
1102	Fort Smith	AO-237-A35
1106	Southwest Plains	AO-210-A46
1108	Central Arkansas	AO-243-A38
1120	Lubbock-Plainview	AO-328-A26
1124	Oregon-Washington	AO-368-A15
1125	Puget Sound-Inland	AO-226-A31
1126	Texas	AO-231-A53
1131	Central Arizona	AO-271-A26
1132	Texas Panhandle	AO-262-A36
1134	Western Colorado	AO-301-A19
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A6
1136	Great Basin	AO-309-A26
1137	Eastern Colorado	AO-326-A23
1138	Rio Grande Valley	AO-335-A31
1139	Lake Mead	AO-374-A10

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts, on an expedited basis, mandated amendments to the Middle Atlantic and 43 other Federal milk marketing orders. The order changes would increase the Class I differentials in 35 orders and provide a specific minimum Class I differential for each of the 44 orders for a two-year period. The order changes were mandated by Congress through the enactment of the Food Security Act of 1985 (Pub. L. 99–198).

The order changes must be effective by May 1, 1986 for milk received on and after that date. Accordingly, a recommended decision and the opportunity to file exceptions thereto have been omitted. A hearing on implementation of these provisions was held January 28, 1986.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 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 document in this proceeding:

Notice of Hearing: Issued January 3, 1986; published January 13, 1986 (51 FR 1378).

Preliminary Statement

A public hearing was held upon mandated amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Alexandria, Virginia on January 28, 1986. Notice of such hearing was issued on January 3, 1986, and published in the **Federal Register** on January 13, 1986 (51 FR 1378).

Interested parties were given until February 10, 1986, to file post-hearing briefs on the mandated amendments as published in the notice of hearings and on whether the amendments should be considered on an emergency basis.

The material issues on the record of the hearing relate to:

1. Class I differentials mandated by the Food Security Act of 1985; and

2. Omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented and the record thereof:

1. Class I Price Differentials Mandated by the Food Security Act of 1985

Each of the 44 Federal marketing orders should be amended to provide minimum Class I price differentials for a two-year period, and subsequently unless modified by amendment to the order involved.

The Class I milk price (the highest priced use-classification) under each order is established each month by adding a specified dollar amount to the Minnesota-Wisconsin manufacturing grade milk prices (M–W price) for the second preceding month. These specific amounts, which are provided in the orders but not defined, are commonly referred to throughout the industry as "Class I differentials" or "fluid differentials." It is these differentials that the Food Security Act of 1985 establishes at higher levels in 35 of the orders and fixes at a minimum level in each of the 44 orders.

The Food Security Act of 1985, Title I, Dairy, Subtitle C—Milk Marketing Orders, amends Section 8c(5)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)(A)), reenacted with amendments by the Agricultural Marketing Agreement Act (Act). This new law (Pub. L. 99–198) mandates that the present 44 Federal milk marketing orders be amended, and that these amendments be applicable to milk received on and after May 1, 1986. The Food Security Act of 1985 increases Class I differentials in 35 of the 44 orders and provides a specific minimum Class I differential for each of the 44 orders for a two-year period.

Official notice was taken at the public hearing held January 28, 1986, of Federal Milk Order Market Statistics for April 1985 and the Code of Federal Regulations for each of the 44 orders for the purpose of showing the present Class I differentials. The present Class I differentials, shown below, were taken from Table I on page 9 of the Federal Milk Order Market Statistics for April 1985. The new mandated Class I differentials that appear below are taken from the Congressional Record (official notice taken) dated December 17, 1985, at page H 12255.

Federal marketing order	Class I differentials		Increase
	Effective May 1, 1986	Before May 1, 1986	
Middle Atlantic	$3.03	$2.78	$0.25
New England	3.24	3.00	.24
New York-New Jersey	3.14	2.84	.30
Upper Florida	3.58	2.85	.73
Georgia	3.08	2.30	.78
Tennessee Valley	2.77	2.10	.67
Tampa Bay	3.88	2.95	.93
Southeastern Florida	4.18	3.15	1.03
Chicago Regional	1.40	1.26	.14
Southern Illinois	1.92	1.53	.39
Ohio Valley	2.04	1.70	.34
Eastern Ohio-Western Pennsylvania	1.95	1.85	.10
Southern Michigan	1.75	1.60	.15
Michigan Upper Peninsula	1.35	1.35	0
Louisville-Lexington-Evansville	2.11	1.70	.41
Indiana	2.00	1.53	.47
Central Illinois	1.61	1.39	.22
Greater Kansas City	1.92	1.74	.18
Nebraska-Western Iowa	1.75	1.60	.15
Upper Midwest	1.20	1.12	.08
Black Hills, South Dakota	2.05	1.95	.10
Eastern South Dakota	1.50	1.40	10
Iowa	1.55	1.40	.15
Alabama-West Florida	3.08	2.30	.78
New Orleans-Mississippi	3.85	2.85	1.00
Greater Louisiana	3.28	2.47	.81
Memphis, Tennessee	2.77	1.94	.83
Nashville, Tennessee	2.52	1.85	.67
Paducah, Kentucky	2.39	1.70	.69
Fort Smith, Arkansas	2.77	1.95	.82
Southwest Plains	2.77	1.98	.79
Central Arkansas	2.77	1.94	.83
Lubbock-Plainview, Texas	2.49	2.42	.07
Oregon-Washington	1.95	1.95	0
Puget Sound-Inland	1.85	1.85	0
Texas	3.28	2.32	.96
Central Arizona	2.52	2.52	0
Texas Panhandle	2.49	2.25	.24
Western Colorado	2.00	2.00	0
Southwestern Idaho-Eastern Oregon	1.50	1.50	0
Great Basin	1.90	1.90	0
Eastern Colorado	2.73	2.30	.43
Rio Grande Valley	2.35	2.35	0
Lake Mead	1.60	1.60	0

The new Class I differentials shown above for the New England, New York-New Jersey, and Michigan Upper Peninsula orders are the same as those that appeared in the notice of hearing signed January 3, 1986. For the New England market, the above differential of $3.24 is the differential for plant location zone 1. For the New York-New Jersey market, the differential of $3.14 is the differential for the 1 to 10 mile freight zone. For the Michigan Upper Peninsula market, the Class I differential of $1.35 applies to Zone 2.

The Class I prices for these three orders, however, are not announced at those locations. In the New England market, the Class I price is announced for plant location zone 21 and the price is increased in 10-mile increments so that the price is 72 cents higher for Zone 1. In the New York-New Jersey market, the Class I price is announced for the 201–210 mile freight zone and the price is increased in 10-mile increments so that the price is 59 cents higher for the 1 to 10 mile freight zone. In the Michigan Upper Peninsula market, the Class I

price is announced for Zone 1 and is increased 20 cents for Zone 2.

The order language adopted to implement the new differentials continues to announce the prices at the pricing zones that are presently used in the New England, New York-New Jersey, and Michigan Upper Penninsula orders. These amounts, when adjusted as indicated previously, reflect the Class I differentials that appear in the preceding table and in the Congressional Record. The Department's interpretation in this regard was supported in testimony at the hearing and in briefs filed after the close of the hearing.

Shown below is the Congressional rationale for these minimum two-year Class I differentials. The following paragraphs appear on pages 22 through 24 of the "Report of the Committee on Agriculture" to accompany H.R. 2100. Official notice of this report was taken at the hearing.

"Federal Milk Marketing Orders

"The Federal milk marketing order program is authorized by the Agriculture Marketing Agreement Act of 1937, as amended. Federal orders are part of a broad program of marketing arrangements and whereby the Secretary of Agriculture is authorized to stabilize market conditions by issuing regulations which apply to handlers of milk and its products. The program is designed to achieve this orderly marketing by establishing terms and conditions which all affected milk processors must follow in dealing with producers. In 1984, over two-thirds of all milk sold to plants and dealers, and over 80 percent of the fluid grade deliveries in the United States were regulated by federal milk marketing orders.

"Orders establish minimum prices which must be paid by handlers to farmers for milk used in various ways. The current minimum order prices for milk used in fluid form are, however, in many cases inadequate to cover the cost of supplying the fluid market. This has resulted in payments by handlers greater than the minimum order price in order to assure an adequate supply of milk for the fluid market. The variability of 'cover-order charges' has caused instability that the federal milk order program was designed to alleviate.

"The last major changes made by the Department of Agriculture to Class I price differentials were in the late 1960's. Since costs, including transportation, assembly, and handling, have increased substantially during that time, the Committee feels it is necessary to adjust the fluid milk differentials in 35 of the 44 federal milk orders so that the prevailing minimum order prices will better cover the cost of supplying these markets. This action will reduce the need for over-order payments and provide equity among handlers supplying the market.

* * * * *

"The bill provides for differential adjustments under the provisions of the Agricultural Marketing Agreement Act of 1937, which sets up the milk marketing orders in 44 marketing order areas. The bill requires that specified minimum levels be set for a two-year period following enactment of this law. It limits the adjustments to the highest use classification of milk under the current orders.

"In the implementation of the minimum prices for highest use classification of milk, the Secretary is also required to make necessary location adjustments within each order in order to assure that the new adjustments are effective throughout the order. In addition, the Secretary is required to address the varied locations of delivery of milk throughout each marketing order.

"The purpose of the Agricultural Marketing Agreement Act of 1937 is to use milk marketing orders as instruments for stabilizing marketing conditions for fluid milk. The Act of 1937 also states that minimum prices established by orders shall be uniform as to all handlers subject only to adjustments for (1) volume, market and production differentials customarily applied by the handlers subject to such an order, (2) the grade or quality of milk purchased, and (3) the location at which delivery of such milk, or any classification thereof, is made to such handlers.

"Furthermore, under the Agricultural Adjustment Act of 1949, Provisions require that milk be supported at specified prices establishment by the Secretary in accordance with the law. Under the prices support program, the objective was the establishment of the prices necessary in order to maintain an adequate supply of milk to meet current needs and to maintain the productive capacity to meet anticipated future needs.

"It is noted that the 1983–1984 diversion program exacerbated milk supply deficiencies in certain areas of the country. The prevailing minimum Federal order prices do not reflect the cost of moving milk from surplus to deficit areas. The result is therefore an ineffectiveness of the Order System to assure an adequate supply of milk for fluid use in deficient areas. The proposed marketing order minimums included in title I will facilitate the acquisition of an adequate supply of milk for fluid use in those deficit areas.

"The proposed changes in the marketing order minimums will more fully address the cost of transferring milk from the surplus areas to the deficit areas which in turn will assist in providing a more uniform price to handlers or uniform payments to producers. At the moment, there are three major problems with respect to the operation of the Federal order systems: (1) Minimum Federal order Class I prices are not adequate to attract the necessary supply to meet the Class I needs in deficit areas; (2) handlers who must go outside their territory to acquire additional milk incur greater costs for milk than handlers who obtain all of their milk from the local area; and (3) those producers who assume the responsibility of supplying the needs of the market have to pay the costs of transporting supplemental milk, resulting in producers not receiving uniform prices.

"There have been expressed concerns that implementation of minimum Class I prices would set a precedent in regard to management of Orders. The Secretary has not made permanent adjustments since the late 1960's The Act does not suggest that milk be locally produced nor that it come from any specific area. It only requires that milk be attracted to those locations where it is needed for fluid use. The manner in which to attract milk is through adjusted prices. In deficit areas, that means that price must be high enough to cause it to be moved from where it is being produced to where it is needed. Class I differentials under the orders are not high enough to do this under today's cost of transportation. It now costs about 3.4 cents per hundredweight per ten miles to move milk; however when the Class I differentials under Federal orders were established, It was at a rate of about 1.5 cents per hundredweight per ten miles. Despite this dramatic increase in transportation costs, the minimum prices have not been permanently increased."

Early in the hearing, Counsel for the Milk Foundation of Indiana raised an objection to the Notice of Hearing as improper on the basis that the Food Security Act of 1985 did not mandate changes in the Class I differentials. Instead, it was argued, the new law ". . . requires changes in the quality, volume, production and market differentials customarily applied by the handlers . . ." under clauses (1) and (2) of section 8c(5)(A) of the Agricultural Marketing Agreement Act of 1937. The objection maintained that Class I prices are established under the first part of the first sentence in section 8c(5)(A), not under Clauses 1 and 2. Thus, it was argued, ". . . the notice is defective because it purports to support the Class I differentials between markets on a congressional mandate that is, in fact, contrary to the plain meaning of this statutory language." The objection to the Notice of Hearing was overruled by the presiding Administrative Law Judge, who ruled that the record would not be closed at that point because of the legal issue raised by Counsel. The same position was held in the brief filed on behalf of the Milk Foundation of Indiana.

The Administrative Law Judge's ruling to keep the record open was correct. We believe it is clear from the preceding quoted paragraphs that the Congress intended that Class I differentials (and, thus, Class I milk prices) be increased in 35 of the 44 Federal milk orders. This is unmistakably clear in the third quoted paragraph, which refers to both the "Class I price differentials" and "fluid milk differentials." It is concluded that the Notice of Hearing was proper and the Congress indeed has mandated that the orders must be amended to provide the minimum differentials specified in

the Food Security Act of 1985, Subtitle C, section 131(a).

At the hearing held on January 28, 1986, ten witnesses testified in opposition to the mandated Class I differentials. Two of these witnesses represented the States of Wisconsin and Minnesota. The other witnesses represented either proprietary handlers or cooperative associations from almost all regions of the country. Their opposition, in many cases, went beyond the issue of the mandated Class I differentials. In general, their opposition to these new Class I differentials can be characterized as follows:

1. The Federal order rulemaking process was not followed;

2. Milk supplies at this time are more than sufficient; therefore, any price increase can not be justified;

3. These new Class I differentials are arbitrary, inconsistent and without any economically justifiable basis;

4. There is a wide disparity in the new Class I differentials as they relate to transportation costs from Eau Claire, Wisconsin;

5. Congress in drafting the Food Security Act of 1985, referred to the wrong section of the Agricultural Marketing Agreement Act, as amended, when creating these new Class I differentials;

6. The new Class I differentials discriminate against dairy farmers in Wisconsin, Minnesota and other midwest areas;

7. The new Class I differentials will cause permanent inefficient milk production in higher cost production regions such as the southeast at the expense of the low cost regions in the upper midwest;

8. The new Class I differentials discriminate against producers of Grade B milk and between Grade A producers because the new differential increases vary from zero to $1.03;

9. The new Class I differentials in the three northeastern Federal orders will disrupt orderly marketing because the rate of increase in these three Class I differentials was not the same; and

10. Fluid milk distributors regulated by the Indiana milk order and by several orders in the southeast will be at a competitive disadvantage in competing with milk distributors regulated by surrounding markets.

Several witnesses indicated that a national hearing should be called before these new Class I differentials are implemented. In their view, there were several important issues that should be resolved, such as improvement in price alignments and better methods to move Class I milk to population centers, before these new Class I differentials are implemented.

The Department believes that it is under a legal obligation to implement these new Class I differentials as drafted and within the time frame prescribed by Congress. Consequently, the Department has chosen not to comment on the merits of the testimony in opposition.

Testimony at the hearing and proposed findings in briefs filed by various persons also concerned the effective date of the mandated differentials and the period of time that the differentials should remain in effect.

The orders must be amended so that the Class I differentials are effective by May 1, 1986. The Department believes, therefore, that the amendment action must be completed no later than April 4, 1986, so that the May 1986 Class I prices that are scheduled to be announced on that date will reflect the new Class I differentials. This timetable carries out the provision of the new law that "The amendment made by this section shall take effect on the first day of the first month beginning more than 120 days after the date of enactment of this Act." The date of enactment was December 23, 1985.

As required by the Act, the minimum differentials will remain in effect through April 30, 1988, and will then continue in effect thereafter until amended. Any such amendments would have to be based on evidence obtained at a public hearing.

It was argued that the order amendments should be structured such that the differentials would terminate automatically at the end of the minimum two-year period specified in the law. One view was that at that time the differentials should be those now provided in the orders. Another view urged that a hearing be set at least 90 days prior to the end of the two-year period to review the effects of the higher differentials.

Automatic termination of the differentials cannot be provided. The new law requires that the differentials remain in effect until amended. Even if this were not the case, there is no basis for concluding at this time, and on the basis of this hearing, what the appropriate differentials should be some two years in the future.

There is no need to incorporate in the amendments a provision that specifies a hearing. If a hearing appears warranted near the end of the two-year period, the industry can request one at that time.

Another view expressed in most of the opposing testimony and in briefs was that changes in the location adjustments to reflect the locations at which delivery of milk of the highest use classification must be made effective at the same time that the minimum Class I differentials become effective. Similarly, some persons urged that any changes in location adjustments should be terminated at the same time as the differentials, if they are terminated.

This proceeding does not involve location adjustments. However, it should be noted that proposals to change location adjustments have been solicited from the industry, and four regional hearings have been solicited from the industry, and four regional hearings have been scheduled. These proceedings will be handled as quickly as possible. Congress did not specify the location adjustments to be used. Therefore, these hearings are the only way to determine what changes, if any, should be made.

One view expressed was that changes should not be made to the location adjustment provisions of the orders. Instead, it was urged that a national hearing be called to consider implementing transportation pools. Another view stated that cooperatives should deal with price aligment problems through over-order charges. Both views are beyond the scope of this proceeding and, therefore, no further discussion is warranted.

Testimony presented at the hearing and proposed findings in briefs contended that the Secretary, in implementing the Class I differentials must adopt any other amendments necessary to ensure that the resulting orders, as amended, will ensure that minimum prices will be uniform as to all handlers and that no order establishes a trade barrier. To this end, it was urged that a Notice of Hearing be issued promptly entertaining proposals for the following:

1. Whether existing definitions in any order should be changed to include new geographic territory or exclude existing geographic territory;

2. Whether the Department should require Class I milk to be priced according to the order in the market in which the milk is sold, rather than the order in which the plant has its largest amount of route dispositions;

3. Whether existing definitions of "pool plant" should be changed, including but not limited to the percentage of receipts disposed of as route dispositions necessary for classification as a pool plant;

4. Whether, consistent with the *minimum* Class I differentials established in the Food Security Act, existing Class I differentials in some markets should be changed to conform

with economic realities created by new Class I differentials in other markets; and

5. Whether any other changes to existing orders are necessary to adjust to the new Class I differentials.

It is not possible in this decision, on the limited basis of this proceeding, to respond to the issues set forth above. It should be noted, however, that the hearings on location adjustments, previously mentioned, may address the issues of price uniformity and trade barriers.

A brief filed on behalf of Foremost Dairies, contented that the new differentials will cause misalignment of prices between the Texas and Lubbock-Plainview orders. Accordingly, the brief urges increasing the Class I differential at Lubbock to $3.38 instead of $2.49.

This request is denied. The only issue in this proceeding is implementation of the minimum Class I differentials mandated by the Food Security Act of 1985.

At the hearing, several witnesses and an attorney for a regional cooperative association questioned the need to hold a public hearing to implement these Class I differentials. The Department's rules and regulations require the holding of a public hearing prior to amending any Federal milk order. The hearing provided an opportunity for the industry to express views on whether the orders should exist with the Class I differentials mandated by Congress. Also, the rulemaking process gives producers an opportunity to approve or reject the orders as proposed to be amended.

2. Omission of a Recommended Decision and the Opportunity To File Written Exceptions Thereto

The due and timely executive of the functions of the Secretary under the Act imperatively and unavoidably require the omission of a recommended decision and an opportunity for written exceptions with respect to issue No. 1.

The Food Security Act of 1985 provides that the Secretary must implement these new Class I differentials on the first day of the first month beginning more than 120 days after the date of the enactment of this Act. The Department has interpreted this mandate to mean that the 44 orders should be amended so that the specified differentials will be incorporated in the minimum order Class I prices to be applicable to milk received on and after May 1, 1986. The 44 orders presently provide that the Class I price is announced on the fifth day of the month to apply to the following month (advanced pricing). As previously indicated, the Class I differential is part of the Class I price.

The hearing notice stated that evidence would be taken to determine whether conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure.

A witness for the Department testified with considerable specificity as to the procedures that must be followed by the Department in amendment proceedings and the approximately minimum time required between the time the hearing is closed and the publication of the Final Rule (Order Amending the Order). It is reasonable to conclude from the testimony that there is not sufficient time to provide for a recommended decision and the opportunity to file exceptions and meet the date mandated for implementation of the specified differentials.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain 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.

At the hearing, and in a brief filed after the close of the hearing, Counsel for Malone and Hyde, and Southeastern Dairies made a motion that the record of this proceeding remain open pending completion of hearings on location adjustments. The presiding Administrative Law Judge ruled that the record would be closed at the close of the hearing. The motion also urged the Secretary to rule that Section 131 of the Food Security Act of 1985 requires location adjustments and that the Class I differentials be effected on the same date as such location adjustments. These matters have been dealt with earlier in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effetuate the declared policy of the Act as amended by the Food Security Act of 1985; and

(b) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

November 1985 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas, except the New York-New-Jersey, Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, and Memphis, Tennessee, marketing areas, is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that referendums be conducted and completed on or before the 25th 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 orders as amended and as

hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey, Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, and Memphis, Tennessee, marketing areas are approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referendums is hereby determined to be November 1985, except that September 1985 shall be the representative period for the New York-New Jersey order.

The agent of the Secretary to conduct such referendums is hereby designated to be Norman, K. Garber (New York-New Jersey), C. Mack Endsley (Eastern Ohio-Western Pennsylvania), Arnold M. Stallings (Louisville-Lexington-Evansville), and Richard E. Arnold (Memphis, Tennessee).

List of Subjects in 7 CFR Chapter X

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC., on: March 14, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

Order [1] Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

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

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act as amended by the Food Security Act of 1985; and

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR Chapter X continues to read as follows:

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

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. In § 1004.50, paragraph (a) is revised to read as follows:

§ 1004.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.03

* * * * *

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. In § 1001.50, paragraph (a) is revised to read as follows:

§ 1001.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof the Class I price in Zone 21 shall be the basic formula price for the second preceding month plus $2.52. Through April 30, 1988, and thereafter until amended, the differential value for Zone 1 shall be $3.24.

* * * * *

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. In § 1002.50a, paragraph (a) is revised to read as follows:

§ 1002.50a Class prices.

* * * * *

(a) For Class I-A milk, from the effective date hereof the Class I price in the 201–210 mile freight zone shall be the basic formula price for the second preceding month plus $2.55. Through April 30, 1988, and thereafter until amended, the differential value in the 1–10 mile freight zone shall be $3.14.

* * * * *

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. In § 1006.50, paragraph (a) is revised to read as follows:

§ 1006.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.58.

* * * * *

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. In § 1007.50, paragraph (a) is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.08.

* * * * *

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. In § 1011.50, paragraph (a) is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1011.50, paragraph (a) is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.88.

* * * * *

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. In § 1013.50, paragraph (a) is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $4.18.

* * * * *

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. In § 1030.50, paragraph (a) is revised to read as follows:

§ 1030.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.40.

* * * * *

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. In § 1032.50, paragraph (a) is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.92.

* * * * *

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. In § 1033.51, paragraph (a) is revised to read as follows:

§ 1033.51a Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.04.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. In § 1036.50, paragraph (a) is revised to read as follows:

§ 1036.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.95.

* * * * *

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. In § 1040.50, paragraph (a) is revised to read as follows:

§ 1040.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus § 1.75.

* * * * *

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

1. In § 1044.51, paragraph (a) is revised to read as follows:

§ 1044.51 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof, the Class I price in Zone 1 shall be the basic formula prices for the second preceding month plus $1.15. For plants located in Zone 1(a) the price shall be the price specified for Zone 1 less 10 cents; for plants located in Zone 2 the price shall be the price specified for Zone 1 plus 20 cents. Through April 30, 1988, and thereafter until amended, the differential value for Zone 2 shall be $1.35 and for plants located outside the marketing area and west of Lake Michigan, the price (subject to § 1044.53) shall be that specified for Zone 1 and for plants located outside the marketing area and east of Lake Michigan, the price (subject to § 1044.53) shall be that specified for Zone 2.

* * * * *

PART 1046—MILK IN THE LOUSIVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. In § 1046.50, paragraph (a) is revised to read as follows:

§ 1046.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus §2.11.

* * * * *

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. In § 1049.50, paragraph (a) is revised to read as follows:

§ 1049.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.00.

* * * * *

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. In § 1050.50, paragraph (a) is revised to read as follows:

§ 1050.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.61.

* * * * *

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. In § 1064.50 paragraph (a) is revised to read as follows:

§ 1064.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.92.

* * * * *

PART 1065—MILK IN THE NEBRASKA—WESTERN IOWA MARKETING AREA

1. In § 1065.50, paragraph (a) is revised to read as follows:

§ 1065.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. In § 1068.50, paragraph (a) is revised to read as follows:

§ 1068.50 Class prices

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.20.

* * * * *

PART 1075—MILK IN THE BLACK HILLS, SOUTH DAKOTA MARKETING AREA

1. In § 1075.51, paragraph (a) is revised to read as follows:

§ 1075.51 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.05.

* * * * *

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. In § 1076.50, paragraph (a) is revised to read as follows:

§ 1076.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

PART 1079—MILK IN THE IOWA MARKETING AREA

1. In § 1079.50, paragraph (a) is revised to read as follows:

§ 1079.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.55.

* * * * *

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. In § 1093.50, paragraph (a) is revised to read as follows:

§ 1093.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.08.

* * * * *

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.50, paragraph (a) is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.85.

* * * * *

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. In § 1096.50, paragraph (a) is revised to read as follows

§ 1096.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.28.

* * * * *

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. In § 1097.50, paragraph (a) is revised to read as follows:

§ 1097.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. In § 1098.50, paragraph (a) is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. In § 1099.50, paragraph (a) is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.39.

* * * * *

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

1. In § 1102.50, paragraph (a) is revised to read as follows:

§ 1102.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. In § 1106.50, paragraph (a) is revised to read as follows:

§ 1106.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price in Zone 1 shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. In § 1108.50, paragraph (a) is revised to read as follows:

§ 1108.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

* * * * *

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA

1. In § 1120.50, paragraph (a) is revised to read as follows:

§ 1120.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.49.

* * * * *

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

1. In § 1124.51, paragraph (a) is revised to read as follows:

§ 1124.51 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I

price shall be the basic formula price for the second preceding month plus $1.95.

* * * * *

PART 1125—MILK IN THE PUGET SOUND-INLAND MARKETING AREA

1. In § 1125.50, paragraph (a) is revised to read as follows:

§ 1125.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.85.

* * * * *

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. In § 1126.50, paragraph (a) is revised to read as follows:

§ 1126.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.28.

* * * * *

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. In § 1131.50. paragraph (a) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

1. In § 1132.50, paragraph (a) is revised to read as follows:

§ 1132.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.49.

* * * * *

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

1. In § 1134.50. paragraph (a) is revised to read as follows:

§ 1134.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.00.

* * * * *

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. In § 1135.50. paragraph (a) is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1986, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plust $1.50.

* * * * *

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. In § 1136.50. paragraph (a) is revised to read as follows:

§ 1136.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.90.

* * * * *

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. In § 1137.50. paragraph (a) is revised to read as follows:

§ 1134.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.73.

* * * * *

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

1. In § 1138.50. paragraph (a) is revised to read as follows:

§ 1138.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.35.

* * * * *

PART 1139—MILK IN THE LAKE MEAD MARKETING AREA

1. In § 1139.50. paragraph (a) is revised to read as follows:

§ 1139.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.60.

* * * * *

[FR Doc. 86-6078 Filed 3-19-86; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Part 1135

[Docket No. AO-380-A5]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts several amendments to the Southwestern Idaho-Eastern Oregon Federal milk order. The changes would relax the standards required under the order for distributing plants, supply plants, and producers to participate in the marketwide pool. The percentage of a pool distributing plant's total receipts that must be accounted for as route dispositions would be reduced from 40 to 25 percent. The amount of its receipts that a pool supply plant would be required to ship to pool distributing plants also would be reduced from 40 to 25 percent. The requirement that at least one day's production of milk be physically received at a pool plant during each of the months of September through February in order for the rest of the producer's milk to be eligible for unlimited diversion would be changed to a requirement that one day's production of each producer's milk must be physically received at a pool plant for three consecutive months on a one-time basis. The limit on the percentage of a handler's milk that may be diverted to nonpool plants would be changed from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

The amendments were proposed by Dairymen's Creamery Association, a cooperative association representing nearly two-thirds of the dairy farmers supplying milk to the Southwestern Idaho-Eastern Oregon market, and are based on the record of a public hearing

held at Boise, Idaho, on October 16, 1985. The amendments are necessary to reflect current marketing conditions and to assure orderly marketing in the Southwestern Idaho-Eastern Oregon marketing area. Cooperative associations will be polled to determine whether producers favor the issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250 (202) 447-7311.

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

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers, and will tend to ensure the use of efficient milk marketing practices.

Prior documents in this proceeding:

Notice of Hearing: Issued August 29, 1985; published September 4, 1985 (50 FR 35829).

Recommended Decision: Issued February 6, 1986; published February 12, 1986 (51 FR 5199).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Southwest Idaho-Eastern Oregon 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 Boise, Idaho, on October 16, 1985. Notice of such hearing was issued on August 29, 1985, and published September 4, 1985 (50 FR 35829).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on February 6, 1986, 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.

The material issues on the record of the hearing relate to:

1. Pool plant qualification requirements.
   (a) Distributing plant.
   (b) Supply plant.
2. Diversion of producer milk.
   (a) Producer delivery requirement.
   (b) Limitation on diversions to nonpool plants.
3. Continued suspension of producer delivery requirement and limitation on diversions to nonpool plants.
4. Correction of published Class I price computation procedure.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool Plant Qualification Requirements

Dairymen's Creamery Association proposed that the pool plant qualification requirements be relaxed for both distributing and supply plants. Those requirements are discussed in the following findings.

(a) *Distributing plant.* The total route distribution requirement that must be met by distributing plants to qualify for pool status under the order should be reduced from 40 to 25 percent of the plant's total receipts of fluid milk products. The change was proposed by Dairymen's Creamery Association (DCA), and was supported at the hearing by spokesmen for DCA and Associated Dairies, a distributing plant operator with two distributing plants pooled under the order. The DCA representative introduced statistics showing that all of the producer milk of DCA, Mountain Empire Dairymen's Association (MEDA) and one long-term contract producer, representing over 80 percent of the producer milk on the market, is pooled on the basis of Associated Dairies' route dispositions. He testified further that, as Associated Dairies' fluid milk sales represent less than half of the Class I sales under the order, the Class I utilization of milk pooled through Associated Dairies is much less than the 16 percent currently experienced by the market as a whole.

The witness stated that the two Associated Dairies' plants currently receive more milk than is needed at either plant for milk products processed there in order to assure that all of the DCA and MEDA milk will be eligible for pooling. He introduced an exhibit that showed an average of over 2,500,000 pounds of milk per month delivered to Associated Dairies and transferred back out to nonpool plants during the period from January 1984 through August 1985. This practice, he testified, resulted in the failure of one of the two Associated Dairies' plants to meet the order's route disposition requirements for pooling during the summer of 1985, and necessitated the suspension of the limits on diversions of producer milk directly to nonpool plants to assure the continued pooling of the two cooperatives' milk supplies.

The president of Associated Dairies testified in favor of the proposed amendment to reduce the pooling standard for distributing plants. He stated that DCA is a half owner of Associated Dairies, and that Associated Dairies cooperates with DCA in helping to assure that a maximum amount of DCA's and MEDA's milk is eligible for pooling by maximizing receipts of the cooperatives' milk at Associated Dairies. In doing so, he said, Associated Dairies has incurred added costs, increased the potential for shrinkage in the milk for which they are held accountable, and caused additional work in their accounting and office operations. The witness also stated that in transferring unneeded milk to handlers with whom they had no prior dealings, Associated Dairies had encountered some cashflow problems because of delays in payments for milk. The Associated Dairies' witness testified that an increase in Class II use has contributed to the difficulty of maintaining pool status for the handler's two plants. He stated that a contract to supply ice cream mix to a number of fast-food outlets in the Northwest has created an imbalance in the relationship between Class I and Class II sales within Associated Dairies' operations. The witness indicated that as Class II sales increase it will become more difficult to dispose of at least 40 percent of Associated Dairies' receipts as Class I route dispositions, and urged adoption of the reduced percentage requirements.

Statistics introduced at the hearing by the Southwestern Idaho-Eastern Oregon market administrator's office show that the percentage of producer milk used in Class I in the market since the effective date of the order in 1981 has ranged from 13 to 24 percent. In the 18 months immediately preceding the hearing, the Southwestern Idaho-Eastern Oregon Class I use percentage at no time reached 20 percent. At the present time, Class I use in the market is increasing, but at a lesser rate than production. As a result, the percentage of the total producer milk used in Class I is declining.

Adoption of the proposed increases in the limits on the amount of milk that

may be delivered directly to nonpool plants would allow DCA and Associated Dairies to reduce the amount of producer milk received at Associated's plants to a quantity more in line with Associated's requirements, and thereby increase the percentage of such receipts used in Class I. However, in the Associated Dairies' operation, Class II use apparently is accounting for a growing percentage of the handler's fluid milk receipts. Therefore, Associated Dairies is likely to continue to experience difficulty in meeting the pool plant qualification requirements since much of the milk received at Associated's plants will be needed for use in Class II products.

The current provision that requires a distributing plant to distribute on routes 40 percent of its fluid milk receipts is not consistent with the intent of the marketwide pooling provisions of the order, since it threatens the pooling status of a large proportion of the milk supply associated with the market. It is appropriate to adjust the requirement downward to better reflect the market's present balance between the supply of and demand for fluid milk. Accordingly, DCA's proposal to reduce from 40 to 25 percent the percentage of a distributing plant's fluid milk receipts that must be distributed on routes in order for the distributing plant to qualify for pooling should be adopted.

(b) *Supply plant.* The minimum delivery requirement to qualify a supply plant for pool status under the order should be reduced from 40 to 25 percent of the plant's receipts. The receipts to be included in calculation of a supply plant's pool qualification should continue to include producer milk diverted from the plant by the plant operator.

The proposal to lower the monthly delivery requirement for supply plants from 40 to 25 percent was made by Dairymen's Cooperative Association and supported by Associated Dairies. Mountain Empire Dairymen's Association, the operator of the only supply plant pooled under the order, did not testify at the hearing or file a post-hearing brief.

The witness for the proponent testified that the supply plant operated by MEDA at Meridian, Idaho, represents the primary supply of milk for Associated Dairies' Boise plant. He also stated that the supply plant is the only other pool outlet for MEDA and DCA producer milk in addition to the Associated Dairies distributing plant at Twin Falls that receives deliveries of DCA member milk direct from farms. In order to assure that the supply plant is pooled, he said, milk is move first to the supply plant and then to the Boise distributing plant or to a DCA nonpool manufacturing plant at Caldwell. The witness stated that some uneconomic handling is associated with pooling milk through the supply plant. In a post-hearing brief filed by DCA, it was pointed out that the milk supply has increased by 31 percent since 1981, causing a much higher volume of milk to be transferred to nonpool manufacturing pants. The brief stated that a reduction in the supply plant shipping standard would asist the cooperative in attaining orderly, efficient pooling of its milk supply. Although DCA had proposed the removal of diversions of producer milk to nonpool plants from the receipts to be included when computing the supply plant's qualification for pooling, the witness did not address that portion of the proposal in his testimony.

The amount of milk that a supply plant is required to ship to pool distributing plants in order to qualify for pooling should be reduced from 40 to 25 percent of its receipts of fluid milk. The reduced percentage would bring the supply plant pool qualification requirement into closer conformity with the market's percentage of Class I use. As stated by proponent witness in relation to the distributing plant qualification percentage, the Associated Dairies-DCA-MEDA group represents over 80 percent of the producer milk on the market, but less than 50 percent of the market's Class I sales. A requirement that the supply plant through which much of the group's milk is pooled ship 40 percent of its receipts to distributing plants when the marketwide percentage of producer milk used in Class I products is less than 20 percent could only result in excessive levels of unnecessary and uneconomic handling and hauling of milk between plants solely for the purpose of qualifying milk for pooling. In the absence of any support from proponent for the portion of the DCA proposal that would remove diverted milk from receipts in the computation of supply plant pool qualification, that part of the proposal should not be considered.

2. Diversion of Producer Milk

Dairymen's Creamery Association proposed that the producer milk definition in the order be amended to reduce the number of deliveries of a dairy farmer's milk that must be physically received at pool plants if the rest of the farmer's milk is to be eligible for diversion to nonpool plants, and to increase the percentage of a handler's total milk supply that may be diverted directly from farms to nonpool plants. The president of DCA testified that four years' experience in pooling milk under the order has shown these order provisions to be unnecessarily burdensome on handlers and producers in light of the low Class I use percentage of the market and the increasing supply of milk. The proposed amendments are discussed in the following paragraphs.

(a) *Producer delivery requirement.* The requirement that at least one day's production of each producer's milk be physically received at a pool plant during each of the months of September through February in order for the rest of the producer's milk to be diverted to nonpool plants as producer milk should be relaxed. Instead, one day's production of each producer's milk should be received at a pool plant for three consecutive months on a one-time basis, as proposed by DCA.

The DCA controller testified that the order's present "touch-base" requirements place an unneeded burden on handlers and producers. He stated that compliance with the provisions causes unnecessary handling and hauling of producer milk to assure that it is received at pool plants as required by the order. The witness pointed out that the milk of producers located closer than others to pool plants can be delivered to those plants more economically than the milk of producers located farther away from the pool plants. At the same time, he noted, it is costly and inefficient to displace the milk of nearby producers to a distant nonpool plant when the milk of more distant producers must be moved to the pool plant solely for purposes of pool qualification.

The witness testified that the proposed requirement that new producers deliver at least one day's production per month to pool plants for three consecutive months will demonstrate that producers who wish their milk to be pooled actually are able to supply milk to meet the fluid needs of the market. The witness expressed his belief that once a producer's ability to supply the market has been established, there is no longer any need for the producer to prove that ability as long as he remains associated with the market. A requirement that a producer continue to demonstrate his ability to supply the market, he stated, serves only to increase the cost to producers of supplying the market by requiring unnecessary and uneconomic hauling and handling. The witness suggested, however, that if a producer is not pooled under the Southwestern Idaho-Eastern Oregon order for a period of 60 consecutive days, the producer should be required to demonstrate his

willingness and ability to once again supply the market by again fulfilling the proposed three-month delivery requirement.

In support of DCA's proposal to relax the order's limitations on the diversion of producer milk from producers' farms directly to nonpool plants, the witness submitted an exhibit showing the amounts of producer milk moved unnecessarily to pool plants solely to qualify it for pooling, and the amount that failed to qualify for pooling, for each month of January 1984 through August 1985. During the months of September through February, when the "touch-base" provisions of the order were in effect, the amount of milk per day that failed to qualify for pooling averaged over 40 percent higher than the daily average amount of milk that went unpooled during the months of March through August.

The "touch-base" requirement proposed by DCA should represent an adequate standard for individual producers to meet in order to qualify their milk for unlimited diversion to nonpool plants. There is no indication in the record of the hearing that relaxation of the individual producer delivery requirements would attract additional unneeded supplies of milk to the market. A producer located at some distance from the marketing area would still have to maintain a close association with the market. If the milk of such producer were not pooled on the Southwestern Idaho-Eastern Oregon market for a period of 60 days, the producer would have to requalify his milk for unlimited diversions.

It is apparent from the witnesses' testimony that the present "touch-base" requirements of the order are overly burdensome. Producers are required to demonstrate an association with the fluid market that substantially exceeds the market's demand for milk to be used in fluid products. As a result, the uneconomic hauling and handling required to comply with the provisions of the order are unnecessarily burdensome to producers and cooperative associations supplying the market. Accordingly, DCA's proposed changes to the individual producer delivery standards should be adopted. For easier administration, however, the proposed 60-day period off the market after which a producer's milk would have to be requalified should be changed to two months.

(b) *Limitation on diversions to nonpool plants.* The limit on the percentage of a handler's milk that may be diverted from producers' farms directly to nonpool plants should be changed from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

Dairymen's Creamery Association proposed that the diversion limits of the order be relaxed to enable cooperative associations and proprietary handlers to more easily handle milk supplies in excess of the market's fluid needs. The DCA controller cited market statistics that show milk production increasing substantially while Class I use has increased at a lesser rate. He stated that the growing imbalance between production and fluid use has caused increasing difficulties in assuring that all Grade A producer milk in the area and available for pooling will actually be pooled without incurring severe handling and hauling costs. The witness emphasized that all of the milk of DCA and MEDA producers that is pooled on the Southwestern Idaho-Eastern Oregon market is associated with the market on the basis of Associated Dairies' fluid milk sales. He stated that the DCA and MEDA milk represents over 80 percent of the milk pooled on the market, while Associates Dairies' represents less than half of the market's Class I disposition.

Given the Southwestern Idaho-Easter Oregon marketwide average Class I utilization of approximately 16 percent for the first eight months of 1985, the Class I use percentage of all the DCA and MEDA milk pooled on the basis of Associated Dairies' fluid milk disposition would Final Decision—Southwestern Idaho Eastern Oregon be less than 10 percent. The level of Class I use in the market is clearly not high enough to justify a requirement that 30 percent of all producer milk be received at pool plants during the months of September through February. In order that the milk of producer members of DCA and MEDA who have been supplying the fluid needs of the market since its inception in 1981 is not to be excluded from the pool or the cooperatives are not to undertake unnecessary, inefficient and burdensome hauling and handling practices to assure that their member producers' milk is pooled, the diversion limits should be relaxed in accordance with DCA's proposal.

3. Continued Suspensions of Producer Delivery Requirement and Limitation on Diversions to Nonpool Plants

There is no need at this time for a further suspension of the order's diversion limits and "touch-base" requirement. At the time of the hearing, the diversion limits and producer delivery requirements had been suspended for the months of September 1985 through February 1986. The DCA witness testified that suspension of the provisions would be necessary until the order is amended. However, the order does not require each individual producer's milk to be received at pool plants during the period of March through August, and allows 80 percent, rather than 70 percent, of a handler's supply of producer milk to be diverted to nonpool plants. On cross-examination, the witness stated that DCA will be able to operate under the provisions of the order without incurring the costs of unnecessary hauling during the months of March through August 1986. There is no reason to believe that the process of amending the Southwestern Idaho-Eastern Oregon milk order will not be complete well before September 1986. Therefore, the suspensions currently in effect through February 1986 need not be extended.

4. Correction of Published Class I Price Computation Procedure

The instructions currently contained in the order for computing the Class I price should be changed to reflect the findings and conclusions of the final decision published December 7, 1982 (47 FR 54978). The language of § 1135.50(a) should read "The Class I price shall be the basic formula price for the second preceding month plus $1.50." Due to a typographical error in the final order, published December 20, 1982 (47 FR 57445), § 1135.50(a) in the Code of Federal Regulations (CFR) reads "The Class I price shall be the basic formula price for the preceding month plus $1.50." This error must be corrected by means of a docket in order to be corrected in the CFR. This proceeding is an appropriate opportunity for making the correction.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southwestern

Idaho-Eastern Oregon order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

No exceptions were received.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon 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 order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

January 1986 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on March 14, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

Order [1] Amending the Order Regulating the Handling of Milk in the Southwestern Idaho-Eastern Oregon Marketing Area

Findings and determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon 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 as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

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

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on February 6, 1986, and published in the **Federal Register** on February 12, 1986 (51 FR 5199), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for CFR Part 1135 continues to read as follows:

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

2. In § 1135.7, the first sentence of paragraph (a)(2) and the text in paragraph (b) preceding (b)(1) are revised to read as follows:

§ 1135.7 Pool plant.

* * * * *

(a) * * *

(2) Total route disposition (except filled milk) during the month equal to not less than 25 percent of such receipts.

* * * * *

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 25 percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to § 1135.13), subject to the following conditions:

* * * * *

3. In § 1135.13, paragraph (f) (1), (2), (3), (4), and (5) are revised to read as follows:

§ 1135.13 Producer milk.

* * * * *

(f) * * *

[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.

(1) Milk of a dairy farmer who was not a "producer" in the preceding two months shall not be eligible for diversion until one day's production of milk is physically received at a pool plant;

(2) During each of a dairy farmer's first three months as a "producer" under this order, and after any period of two months or longer that a dairy farmer is not a "producer" under this order, milk of the dairy farmer shall not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during any month may not exceed 80 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the months if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 80 percent of the producer milk that the handler causes to be delivered to or diverted from pool plants during the months;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraphs (f) (3) and (4) of this section. The total quantity so diverted during any month may not exceed 80 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

* * * * *

4. In § 1135.50, paragraph (a) is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.50.

[FR Doc. 86-6080 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 85-017]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations in 9 CFR Part 166 (referred to below as the regulations) which contain provisions concerning swine health protection. Specifically, this document would require the cancellation of the license held by the operator of a garbage treatment facility that treats no garbage for 3 consecutive months, and would also provide a mechanism for a licensee to request cancellation of his or her license. These proposed amendments appear to be necessary to eliminate unnecessary visits by Department inspectors to inactive facilities, and would save the Department an unnecessary expenditure of workhours.

DATES: Written comments concerning this proposed rule must be received on or before May 19, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-017. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. L.W. Schnurrenberger, VS, APHIS, USDA, Room 820, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8487.

SUPPLEMENTARY INFORMATION: Any person who operates a treatment facility for garbage to be treated and fed to swine is required to do so under a license issued by the Deputy Administrator. Such facilities are inspected by a Department inspector on a periodic, unannounced basis. Presently, the regulations contain no provisions for cancellation of an operator's license after a facility ceases to treat garbage. This can consequently cause an unnecessary expenditure of Department resources in maintaining files on inactive facilities and in scheduling and carrying out unnecessary inspections. Therefore, this document proposes that an operator's license shall be canceled when the operator's facility has treated no garbage for a period of 3 consecutive months.

This document also proposes that before a license is so canceled, the Veterinarian in Charge will inform the licensee in writing of the reasons for the proposed cancellation. It proposes also that in those instances where there is a conflict as to the facts, the licensee shall, upon request, be afforded a hearing to resolve such conflict, in accordance with rules of practice which shall be adopted for the proceeding.

Additionally, this document would provide a mechanism by which a licensee can voluntarily have his or her license canceled. To have a license so canceled, the licensee would request cancellation of his or her license in writing. The Veterinarian in Charge would then cancel the license and notify the person of the cancellation in writing.

This document would also provide that a licensee whose license is canceled because of a facility that has ceased to treat garbage may reapply for a license at any time, but will have to follow the procedures for applying for a new license as provided for in present § 166.10.

This document would delete the definitions of "Administrator", "Birds" and "Department" from the regulations, because the terms "Administrator" and "Birds" are not used elsewhere in the regulations and the term "Department" would be deleted from the regulations by this proposal. It would also change the language throughout the regulations that refers to "Area Veterinarian in Charge" to language that refers to "Veterinarian in Charge." This change appears to be necessary because the Department presently uses the term "Veterinarian in Charge" to refer to each of its employees formerly referred to as an "Area Veterinarian in Charge." This change in nomenclature reflects the fact that presently most Veterinarians in Charge are assigned to supervise and perform the official work of Veterinary Services in only one State, rather than in a larger geographical region as in the past.

Miscellaneous

This document would also make certain nonsubstantive changes in the regulations for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This rule would be issued in conformance with Executive Order 12291 and has been determined to be not a "major rule". Based on information compiled by the Department, it has been

determined that this rule would have an effect on the economy of less than 100 million dollars; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed cancellation provisions in this document would apply only to those facilities that have already become inactive, and any person who has a license canceled pursuant to this proposal would be eligible to reapply for a license to operate the facility again immediately after any such cancellation.

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

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579-0065.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 166

African swine fever, Animal Diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR Part 166 would be amended as follows:

1. The authority for 9 CFR Part 166 would continue to read:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.15 and 371.2(d)

2. Section 166.1 would be amended by deleting the definitions for "Administrator", "Birds" and "Department".

3. Section 166.1 would be amended by revising the definitions of the word "Inspector" and the terms "Animal and Plant Health Inspection Service (APHIS)" "Deputy Administrator" and "State Animal Health Official" to read:

§ 166.1 Definitions in alphabetical order.

Animal and Plant Health Inspection Service. Animal and Plant Health Inspection Service, United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other official to whom authority is delegated to act for the Deputy Administrator.

Inspector. Any individual employed by the United States Department of Agriculture or by the State for the purposes of enforcing the Act and this part.

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs or any other official to whom authority is delegated to act for the State animal health official.

4. In Part 166, all references to "Area Veterinarian in Charge" would be changed to read "Veterinarian in Charge", and in § 166.1, the definition of "Area Veterinarian in Charge" would be revised to read:

Veterinarian in Charge. The veterinary official of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform the animal health activities of the Animal and Plant Health Inspection Service in the State concerned or any other official to whom authority is delegated to act for the Veterinarian in Charge.

§ 166.2 [Amended]

5. In paragraph (b) of § 166.2, the reference to "of dissemination" would be changed to "or dissemination".

6. In paragraph (c) of § 166.2, the word "Federal" would be deleted.

§ 166.4 [Amended]

7. In paragraph (b) of § 166.4, the reference to "§ 166.13 of this part" would be changed to "§ 166.14".

§ 166.5 [Amended]

8. In paragraph (b) of § 166.5, the reference to "§ 166.13(b)" would be changed to "§ 166.14(b)".

§ 166.6 [Amended]

9. In § 166.6, the reference to "§ 166.13(b)" would be changed to "166.14(b)".

§ 166.8 [Amended]

10. In § 166.8, the reference to "§ 166.13(c)" would be changed to "§ 166.14(c)".

§ 166.9 [Amended]

11. In paragraph (d) of § 166.9, the reference to "(one)" would be deleted.

§ 166.10 [Amended]

12. In paragraph (c)(1) of § 166.10, the word "his" would be changed to "the" both times it appears.

13. In paragraph (c)(2) of § 166.10, the word "his" would be changed to "the" and the term "authorized representative of the Secretary" would be changed to "inspector".

14. In paragraph (d) of § 166.10, the word "Federal" and the reference to "(one)" would be deleted.

§ 166.11 [Amended]

15. In paragraph (b) of § 166.11, the word "Federal" would be deleted and the word "he" would be change to "the Deputy Administrator".

16. In paragraph (d) of § 166.11, the word "his" would be changed to "such person's" both times it appears and the reference to "(one)" would be deleted.

§ 166.12 [Amended]

17. In paragraph (c) of § 166.12, the reference to "(thirty)" would be deleted.

18. In paragraph (d) of § 166.12, the reference to "authorized representative of the Department" would be changed to "inspector".

§ 166.13 [Amended]

19. In paragraph (a) of § 166.13, the reference to "§§ 71.10(b) and 71.11 to Title 9, Code of Federal Regulations", would be changed to "§§ 71.10(b) and 71.11 of this chapter".

20. In paragraph (b) of § 166.13, the words "as defined in Part 160 or this chapter" would be inserted immediately after the words "accredited veterinarian", the reference to "§ 166.13(a)" would be changed to "paragraph (a) of this section", and the reference to "State Animal Health Official" would be changed to "State animal health official".

21. In paragraph (c) of § 166.13, the reference to "§ 166.13(a)" would be changed to "paragraph (a) of this section".

22. In paragraph (d) of § 166.13, the reference to "Department of Agriculture" would be changed to the

United States Department of Agriculture".

§ 166.14 [Amended]

23. In paragraph (d) of § 166.14, the reference to "USDA" would be changed to "United States Department of Agriculture".

24. In paragraph (e) of § 166.14, the reference to "the public" would be changed to "The public", the references to "U.S." would be changed to "United States" each time it appears, and the references to "(APHIS)", "(USDA)" and "(usually the State Veterinarian)" would be deleted.

§§ 166.13, 166.14 and 166.15 [Redesignated from §§ 166.12, 166.13 and 166.14]

25. Present §§ 166.12, 166.13, and 166.14 would be redesignated as §§ 166.13, 166.14, and 166.15 respectively and a new § 166.12 would be added to read as follows:

§ 166.12 Cancellation of licenses.

(a) The Veterinarian in Charge shall cancel the license of a licensee when the Veterinarian in Charge finds that no garbage has been treated for a period of 3 consecutive months at the facility operated by the licensee. Before such action is taken, the licensee of the facility will be informed in writing of the reasons for the proposed action and be given an opportunity to respond in writing. In those instances where there is a conflict as to the facts, the licensee shall, upon request, be afforded a hearing in accordance with rules of practice which shall be adopted for the proceeding.

(b) Any licensee may voluntarily have his or her license canceled by requesting such cancellation in writing and sending such request to the Veterinarian in Charge.[1] The Veterinarian in Charge shall cancel such license and shall notify the licensee of the cancellation in writing.

(c) Any person whose license is canceled in accordance with paragraph (a) or (b) of this section may apply for a new license at any time by following the procedure for obtaining a license set forth in § 166.10

Done at Washington, DC., this 17th day of March 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-6139 Filed 3-19-86; 8:45 am]

BILLING CODE 3910-34-M

[1] The name and address of the Veterinarian in Charge may be obtained from the Assistant Deputy Administrator, Animal Health Programs, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building, Hyattsville, Maryland 20782.

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Reg. AA; Docket No. R-0570]

Unfair or Deceptive Acts or Practices; Exemption Application From the State of Wisconsin

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make an exemption determination.

SUMMARY: The Board has received from the state of Wisconsin an application for an exemption from the Boards Credit Practices Rule, Subpart B of Regulation AA (Unfair or Deceptive Acts or Practices). The rule prohibits banks from entering into consumer credit obligations that contain certain prohibited provisions, from using a certain late charge practice, and from obligating a cosigner prior to providing a required notice explaining the cosigner's obligations. The Board is publishing notice of the Wisconsin application, with an opportunity for public comment, in accordance with § 227.16(b) of Regulation AA. That section provides that the exemption procedures detailed in Appendix B to Regulation Z (Truth in Lending, 12 CFR Part 226) are to be followed in applying for an exemption from the Credit Practices Rule.

DATE: Comments must be received on or before April 24, 1986.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the 20th Street courtyard entrance, 20th Street, between C Street and Constitution Avenue NW., Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0570. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt, Susan J. Kraeger, or Heather L. Hansche, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3867; or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

In April 1985 the Board adopted its Credit Practices Rule, 12 CFR 227 (50 FR 16695), thereby amending its Regulation AA (Unfair or Deceptive Acts or Practices). The Board's rule, which became effective on January 1, 1986, followed the adoption by the Federal Trade Commission (FTC) of its Credit Practices Rule in March 1984 (49 FR 7740), effective March 1, 1985.[1] The Board's rule applies to all banks and their subsidiaries. Staff guidelines—in question and answer format—designed to aid banks in complying with the Credit Practices Rule were issued in November 1985 (50 FR 47036).

The Credit Practices Rule prohibits banks from entering into any consumer credit obligation that contains a confession of judgment clause, a waiver of exemption, an assignment of wages, or a nonpossessory, nonpurchase money security interest in certain types of household goods. The rule prohibits the enforcement of these provisions in a consumer credit obligation purchased by a bank.

The rule also prohibits a practice known as "pyramiding of late charges." Under the pyramiding provision, a bank is prevented from assessing multiple late charges based on a single delinquent payment that is subsequently paid. In addition, the rule prohibits a bank from misrepresenting a cosigner's liability and requires the bank to give a cosigner, prior to becoming obligated in a consumer credit transaction, a disclosure notice which explains the nature of the cosigner's obligations and liabilities under the contract.

Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including the issuance of cease and desist orders and the imposition of penalties of up to $1,000 per day for violation of an order.

(2) Wisconsin's Exemption Application

The state of Wisconsin, through its Banking Commissioner, has applied to the Board for an exemption from the Board's Credit Practices Rule.[2] The

[1] Under section 18(a)(1)(B) and section 5(a)(1) of the Federal Trade Commission Act (FTC Act), the FTC is authorized to promulgate rules that define and prevent "unfair or deceptive acts or practices" in or affecting commerce with respect to extensions of credit to consumers. Section 18(f) of the FTC Act provides that whenever the FTC promulgates a rule prohibiting practices which it has deemed to be unfair or deceptive, the Board, with certain limited exceptions, must adopt a substantially similar rule prohibiting such practices by banks. The Federal Home Bank Board (FHLBB) is also required under section 18(f) to adopt a rule substantially similar to that of the FTC for institutions that are members of the Federal Home Loan Bank System; the FHLBB did so in May 1985 (50 FR 19325), with its rule also taking effect on January 1, 1986.

[2] The state of Wisconsin has submitted similar applications to the FTC and to the FHLBB, in order to obtain exemptions from the Credit Practices

Continued

application contains copies of the Wisconsin Consumer Act and relevant administrative rules, a comparison of the provisions of the Credit Practices Rule and the Wisconsin statutory provisions, and copies of the Banking Commissioner's Annual Reports to the Governor and Legislature on the Wisconsin Consumer Act for three separate years. The application also contains information about the enforcement activities of the Division of Consumer Credit in the Office of the Commissioner of Banking.

The Board's rule (§ 227.16) states that, in applying for an exemption from its Credit Practices Rule, the procedures to be followed are the same as those detailed in Appendix B to Regulation Z (Truth in Lending, 12 CFR Part 226) for applying for an exemption from the regulation. In accordance with those procedures, the Board is publishing for comment notice of its intent to make an exemption determination on the Wisconsin application. The notice summarizes the Wisconsin exemption application, and includes a comparison of the relevant provisions of Wisconsin law and the Board's Credit Practices Rule. In order to avoid undue delay in expediting final action on the Wisconsin exemption request, the notice is being published for a 30 day comment period. Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), copies of the Wisconsin application are available from the Board in Washington or from the Federal Reserve Banks of Chicago and Minneapolis.

Section 227.16 of the Credit Practices Rule provides that if a state applies for an exemption from a provision of the rule, such an exemption may be granted if the Board determines that: (i) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of the Credit Practices Rule applies: and (ii) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the rule's provision. If the Board makes such a determination, the prohibition or requirement in the Board's rule will not be in effect in the state to the extent specified by the Board in its determination, for as long as the state effectively administers and enforces the state requirement of prohibition. The effect of an exemption is that banks and their subsidiaries (other than federally chartered institutions) that are subject to the Board's rule will be subject solely to state law and enforcement.

Applicable state law provisions need not be the same as the comparable federal requirement in order to meet the rule's substantially equivalent standard. Variations, however, should not deprive consumers of the protections provided by federal law. An analysis of the state's enforcement activities focuses on the ways in which a state demonstrates a commitment to enforcement and administration of the state's law; factors such as staffing, training activities, examination and administrative procedures, and other indicators of enforcement efforts may be considered, as well as the existence under the state law of any private right of action by aggrieved consumers.

(3) A Comparison of the Wisconsin Consumer Act and the Board's Credit Practices Rule

The state of Wisconsin asserts that the Wisconsin Consumer Act and the state enforcement scheme meet the standards for exemption contained in the Board's Credit Practices Rule, and requests and exemption on that basis. A comparison of the Wisconsin Consumer Act (as described in the Wisconsin application) and the Board's Credit Practices Rule is set forth below. In particular, the Board solicits comments on the following:

- The degree to which differences in coverage between the Wisconsin law and the Board's rule affect the level of protection afforded by Wisconsin law;
- The degree to which differences in treatment of waivers of exemption under the Wisconsin law and the Board's rule affect the level of protection afforded by Wisconsin law;
- The degree to which differences in the definitions of household goods protected by the Wisconsin law and the Board's rule affect the level of protection afforded by Wisconsin law;
- The degree to which differences in the cosigner provisions of the Wisconsin law and the Board's rule affect the level of protection afforded by Wisconsin law;
- Whether the penalty provisions and other remedies available for violations of Wisconsin law afford a level of protection substantially equivalent to, or greater than, that afforded by the Board's rule; and
- Whether Wisconsin administers and enforces its law effectively.

A. Coverage

Section 421.301(10) of the Wisconsin Consumer Act provides that the consumer credit transactions covered by the act include credit sales, loans, leases, and transactions made under open-end credit plans. Section 421.301(17) of the Wisconsin law provides that the act covers consumers who are natural persons and who acquire real or personal property, services, money or credit for personal, family, household or agricultural purposes. The Credit Practices Rule covers consumer credit obligations other than loans made for the purchase of real property (§ 227.12(a)). It does not cover consumer leases or loans made for agricultural purposes.

Sections 421.301(10) and 421.301(30) of the Wisconsin Consumer Act provide that the act covers: (1) Consumer credit transactions in which a finance charge is or may be assessed; or (2) if finance charges will not be assessed, credit transactions that are repaid in two or more installments (where any installment other than the downpayment is more than twice the amount of any other installment excluding the downpayment), or credit transactions that are repaid in more than four installments. The Credit Practices Rule covers all consumer credit transactions regardless of the number of installments in the repayment period, or whether a finance charge is assessed (§ 227.11(b)).

The Wisconsin Administrative Code (§ 80.06) provides that only credit that is used primarily for personal, family, household or agricultural purposes is covered by the act. The code indicates that "primarily" means 50% or more. The Credit Practices Rule also covers consumer credit transactions made primarily for personal, family or household use; term "primarily," however, is not defined. (Staff Guidelines, Q12(a)–1.)

Section 421.202(6) of the Wisconsin Consumer Act provides that consumer transactions that are in excess of $25,000 are not covered by the act. The Credit Practices Rule does not exclude consumer transactions over $25,000 from the rule's coverage. The dollar amount of the transaction, however, is one of the factors that can be considered in determining whether a transaction is for a business purpose rather than a consumer purpose. (Staff Guidelines, Q12(a)–2.)

B. Confession of Judgment

The Wisconsin Consumer Act prohibits a creditor from taking or accepting from a consumer a warrant or power of attorney or other authorization allowing the creditor, or other person acting for the creditor, to confess judgment on behalf of the consumer (§ 422.405). If a contract contains a

Rules of those agencies. The Wisconsin exemption request to the FTC has been published for comment in the Federal Register (50 FR 46082), but no final determination by the FTC has as yet been made.

confession of judgment, the consumer may, in a private action, void the contract, retain the goods or service provided without any further obligation to pay, and obtain a refund of all monies paid to the creditor (§ 425.305).

The Credit Practices Rule prohibits a confession of judgment in a consumer credit obligation where the consumer waives his or her procedural due process rights prior to the institution of a legal proceeding on the underlying obligation (§ 227.13(a)). The rule does not prohibit a power of attorney in a mortgage loan obligation or deed of trust for purposes of foreclosure; nor does the provision affect a power of attorney given to expedite the transfer of pledged securities or the disposal of repossessed collateral, or to allow prompt cancellation of insurance in an insurance premium finance contract. (Staff Guidelinees, Q13(a)-1.)

C. Waiver of Exemption

The Credit Practices Rule prohibits the inclusion of an executory waiver or a limitation of a state property exemption in a consumer credit obligation, unless the property serves as security for the obligation (§ 227.13(b)). Under the Wisconsin Consumer Act, a certain portion of a consumer's earnings and certain personal and real property are exempt from execution (§ 425.106). Section 421.106(1) of the act provides, in general, that a consumer may not waive or agree to forego rights or benefits under the act, except as the act otherwise provides; there is no provision of that act which expressly enables a consumer to waive a property exemption, and the state asserts that such a waiver would be unenforceable.

Section 425.107(1) of the Wisconsin Consumer Act provides that, with respect to a consumer credit transaction, if a court finds any aspect of the transaction unconscionable, in addition to remedies and penalties provided by statute, the court either will refuse to enforce the transaction or it will modify any unconscionable aspect of the transaction. Under § 427.107(3)(e), if the terms of a transaction require consumers to waive legal rights, such may be considered by a court in determining unconscionability. If a contract is deemed unconscionable, in addition to being unenforceable in whole or in part, the creditor is subject to a penalty of $100 and any actual damages including incidental and consequential damages sustained by the consumer (§§ 425.107(5) and 425.303). In addition, the state indicates that under its § 426.104 authority to review consumer credit contract forms, a form that contains a provision waiving the consumer's right to claim any exemption for personal or real property contained in the act would not be approved.

D. Assignment of Wages

The Wisconsin Consumer Act prohibits an assignment of earnings for payment, or as security for payment, of a consumer credit obligation, unless the assignment is revocable at will by the consumer (§ 422.404(1)). Section 80.361 of the Wisconsin Administrative Code requires a creditor who takes a permissible assigment of earnings to provide the consumer with a notice of the assignment's revocability. If a creditor takes a prohibited wage assignment, the creditor is subject to a penalty of twice th amount of the finance charge (not less than $100 or more than $1,000), or the consumer's actual damages, whichever is greater, in an action brought by the consumer (§ 425.304).

The Credit Practices Rule prohibits a wage assignment in a consumer credit obligation unless the assignment is revocable, is a payroll deduction or preauthorized payment plan, or applies to wages already earned (§ 227.13(c)). The Wisconsin Consumer Act does not expressly address payroll deduction or preauthorized payment plans. The state indicates, however, that payroll deduction plans would be permissible under the act as long as the consumer may revoke them at any time; such plans would include any preauthorized transfer of a consumer's wages from an employer to a particular creditor. With regard to a preauthorized transfer of an amount from a consumer's checking account to a particular creditor, the state doubts that such a preauthorized transaction would have to be revocable because a consumer's checking account would not fall within the definition of earnings a defined in § 421.301(18) of the act.

E. Security Interest in Household Goods

Section 422.417(1)(a) of the Wisconsin Consumer Act provides that, in general, a seller may only take a security interest in the goods sold. If, however, the extension of credit is for $500 or more, the seller may take (1) a security interest in property upon which goods sold are installed or annexed, and (2) a security interest in property upon which services sold are performed (§ 422.417(1)(b)). Under § 422.417(3) of the act, a lender that is not a seller may not take a security interest, other than a purchase money security interest, in certain specifically enumerated household goods. In addition, a lender is prohibited from taking a security interest in real property other than a purchase money security interest, if the credit obligation is less than $1,000. If a lender takes a security interest prohibited by § 422.417, it is subject to a penalty of twice the amount of the finance charge (not less than $100 or more than $1,000), or the actual amount of the damages sustained by the consumer, whichever is greater, in a private action brought by the consumer (§ 425.304).

The Credit Practices Rule prohibits banks from entering into or enforcing consumer credit obligations containing nonpurchase money security interests in specifically enumerated household goods. The rule places no limitations on the lender's ability to take security interests in real property. The list of specific items that are considered protected household goods differs somewhat under the Credit Practices Rule (§ 227.12(d)) and the Wisconsin Consumer Act (§ 442.417(3)(a)). Specifically, unlike the Credit Practices Rule, Wisconsin law does not protect the categories "china" and "personal effects," nor does it protect a television set. In addition, the rule protects the broad classification "appliances," while the act only protects a refrigerator, heating stove and cooking stove. Similarly, the rule protects the broad category, "furniture" (which includes all household furnishings except antiques), while the act limits protection to a dining table and chairs, beds, and a couch and chairs. Both laws specifically protect clothing and kitchenware, as well as linens (referred to as bedding in the Wisconsin Consumer Act) and crockery (referred to as utensils in the Wisconsin Consumer Act).

F. Unfair or Deceptive Practices Involving Cosigners

Under the Credit Practices Rule, before a cosigner becomes obligated for an extension of credit to a consumer, a bank must notify the cosigner in writing of the nature of his or her obligation (§ 227.14(a)(2)). The rule contains a prescribed disclosure statement. A bank must provide a cosigner statement which is substantially similar to that in the rule (§ 227.14(b)(2)). Under the rule the cosigner notice must be clear and conspicuous, and may be contained in a separate document or in the documents evidencing the credit obligation. The Wisconsin Consumer Act requires that a creditor provide a cosigner either with a written notice called "An Explanation of Personal Obligation" or a copy of the documents evidencing the consumer's obligation (§ 422.305(1)). If the notice is given, it must be printed in at least 10-point type, and substantially similar to

the one detailed in the Wisconsin law (§ 422.305(2)).

The notice required by the Credit Practices Rule states: (1) That the cosigner may have to pay the full amount of the debt and late fees or collection costs; (2) that the creditor can collect from the cosigner without first trying to collect from the borrower; (3) that the same collection remedies may be used against the cosigner as against the borrower; (4) that the notice is not the contract that makes the cosigner liable; (5) that if the debt goes into default that fact could become a part of the cosigner's credit history; and (6) the cosigner should think carefully before becoming obligated.

The notice contained in the Wisconsin Consumer Act states: (1) The parties to the contract, the date, the purpose of the credit and the amount of the credit; (2) the cosigner's obligation to pay even though the cosigner may not be entitled to any of the goods or services or the loan proceeds provided to the borrower; (3) the fact that the cosigner may be sued even though the borrower may be able to pay; (4) the fact that the notice is not the agreement that makes the cosigner liable; and (5) the fact that the cosigner is entitled to a free copy of any document the cosigner signs endorsing the transaction. In addition, the Wisconsin notice contains an acknowledgment to be executed by the cosigner upon receipt of the notice.

The Credit Practices Rule specifically prohibits a bank from misrepresenting the nature and extent of cosigner liability to any person (§ 227.14(a)(1)). Misrepresentation of cosigner liability is not specifically prohibited by the Wisconsin Consumer Act. Section 423.301 of the act does in general, however, prohibit false, misleading or deceptive statements with regard to consumer credit transactions. The state contends that directly or indirectly misrepresenting the nature or extent of a cosigner's liability would violate that section of the act. In addition, consumer credit contracts may not include terms which deprive cosigners of any rights provided to consumers under the act, nor may creditors charge cosigners for fees and charges which could not be imposed upon the consumer (§ 422.420). Under Wisconsin law, it is an unconscionable practice to unfairly take advantage of the lack of knowledge, ability, experience or capacity of consumers (§ 425.107(3)(a)), and it is an unfair collection practice for a creditor to attempt to enforce a right with knowledge that the right does not exist (§ 427.104(1)(j)).

If a cosigner does not receive a copy of the consumer credit obligation or a copy of the cosigner disclosure, the cosigner may recover, in a private action, the greater of twice the amount of the finance charge (not less than $100 or more than $1,000) or actual damages (§ 425.304). With regard to an unfair collection practice, the creditor may be liable for twice the amount of the finance charge (not less than $100 or more than $1,000) and the actual damages sustained by the consumer, including damages caused by emotional distress, in a private action brought by the consumer (§ 427.105).

G. Late Charges

Under the Credit Practices Rule, a bank is prohibited from collecting a late charge on a payment when the only delinquency is attributable to a late charge assessed on an earlier installment, and the payment is a full payment made on its due date or within the applicable grace period (§ 227.15). In an open-end credit plan where the bank discloses late charges to the consumer as they are imposed and informs the consumer of the full amount that the consumer must pay for the applicable period in order to remain current on the account, the rule's provision on late charges does not come into play. (Staff Guidelines, Q15–6).

The Wisconsin law prohibits the pyramiding of late charges in separate provisions governing open-end and closed-end credit. Section 422.202(2m)(a) provides that, in connection with an open-end credit plan, an unpaid late charge may not be included in any outstanding balance for the purpose of calculating the minimum payment due in a subsequent billing cycle. Section 422.203(2) of Wisconsin law provides that, with regard to closed-end credit, all payments must be applied first to current installments due, and then to delinquent installments for purposes of determining whether a delinquency charge may be assessed. Under this accounting procedure, if a consumer pays the full amount of the current installment on its due date or within the grace period, no late charge can be assessed on this payment even though all or part of a previous installment is unpaid and even though the unpaid installment is comprised of principal, interest or late charges. If a lender pyramids late charges, the lender is subject to a penalty equal to the greater of twice the amount of the finance charge (not less than $100 or more than $1,000), or the actual damages sustained by the consumer, in an action brought by the consumer (§ 425.304).

H. Enforcement

The Wisconsin Consumer Act is administered by the Commissioner of Banking. The Office of the Commissioner of Banking is funded through program revenues that include funds obtained through examinations and funds obtained by collecting fees from creditors pursuant to § 426.202 of the Wisconsin Consumer Act. The Commissioner is authorized to receive and act on complaints, adopt administrative rules, review and approve contract forms, commence administrative proceedings, and institute judicial proceedings through the state's Department of Justice. Administrative rules to interpret and carry out the purposes of the act were adopted in 1973. Where the Banking Commissioner reviews and approves contract forms used by creditors in consumer credit transactions—a function handled by the Commissioner's legal staff—such approval affords creditor protection from civil liability under the Wisconsin Consumer Act.

The Division of Consumer Credit has a field staff of five examiners who conduct on-site examinations of the consumer credit practices of all state banks, loan companies and motor vehicle dealers licensed to sell motor vehicles on credit. Bank examinations constitute between 15–20% of all of the examinations conducted by the Division of Consumer Credit, and range in length from one to five days. Currently, the time between the examination of each state bank is approximately 24 months. During the years 1983 and 1984, consumer credit examiners conducted an average of 134 bank examinations each year. Wisconsin asserts that its examination and approval procedures result in a high level of compliance with the Wisconsin Consumer Act.

Where compliance cannot be obtained through administrative enforcement, the Banking Commissioner may commence suit to enforce the act through the state of Wisconsin's Department of Justice (§ 426.104(1)(a)). In such an action a civil penalty of not less than $100 and not more than $1,000 for each violation may be recovered. If a violation is knowing and willful, a civil penalty of not less than $1,000 and not more than $10,000 for each violation may be recovered. (§ 426.301.)

(4) Comments Requested

Interested persons are invited to submit written comments on the state of Wisconsin's application for an exemption from the Board's Credit Practices Rule. After the close of the

comment period, based upon its own analysis and analysis of the comments received, the Board will publish in the **Federal Register** notice of the final action on the exemption request.

List of Subjects in 12 CFR Part 227

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

By order of the Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-6128 Filed 3-19-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD09 86-01]

Drawbridge Requirements; Black River, OH

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Lorain County Engineer, Elyria, Ohio, the Coast Guard is considering a change to the operating regulations governing the Erie Avenue Bridge, mile 0.6 over the Black River at Lorain, Ohio, by permitting the number of openings to be limited during certain times and by permitting the bridge to remain closed at certain other times unless advance notice is given to open the draw for the passage of vessels. This change is being considered because of land traffic tie-ups during the day and a decrease of requests to have the bridge opened at night and during the winter months. This action should alleviate the traffic tie-ups and will relieve the bridge owner of the burden of having a perons constantly available to open the draw while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before May 5, 1986.

ADDRESSES: Comments should be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199. The comments and other materials referenced in this notice will be available for inspection and copying at 1240 East Ninth Street, Room 2083D, Cleveland, Ohio. Normal office hours are between the hours of 6:30 a.m. and 3:00 p.m., Monday through Friday, except legal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Ninth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Fred H. Mieser, project officer, and Lt R.A. Pelletier, project attorney.

Discussion of Proposed Requirements

Presently, the Erie Avenue bridge opens on a signal and bridgetenders are required to be in constant attendance at the bridge.

From April 1 though November 30, the proposed requirements would allow the bridge owner to open the draw for pleasure craft only on the hour and half-hour from 7 a.m. to 6 p.m., with no openings for pleasure craft during the peak vehicular traffic times of 8 a.m., 3 p.m., 4 p.m. and 5 p.m., Monday through Friday, except legal holidays. On Saturdays, Sundays and legal holidays, the draw would be required to open for pleasure craft only on the hour and half-hour between the hours of 11 a.m. and 6 p.m. From 11 p.m. to 7 a.m., seven days a week and legal holidays, no bridgetender would be required to be in attendance and the draw would open for pleasure craft and commerical vessels if at least a one hour advance notice is given.

From December 1 through March 31, the bridge would not be manned and the bridge would be required to open on signal if at least a twelve hour advance notice is given.

At all times, the bridge would be required to open on signal as soon as possible for the passage of public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

This change has been requested by the Lorain County Engineer because random bridge openings for the passage of high masted pleasure craft cause land traffic tie-ups. Traffic counts taken at the bridge show an average amount of vehicles passing over the bridge, Monday through Friday, to be from 213 to as many as 412 vehicles in a 15 minute period and from 21 to 376 vehicles in a 15 minute period on Saturdays and Sundays. Bridgetender logs show that there are as few as six minutes between bridge openings for the passage of high masted pleasure craft. Also, requests for opening the draw between the hours of 11 p.m. and 7 a.m. during the navigation season and all times during the winter months are so minimal that removing the bridgetenders during these periods of time should meet the reasonable needs of navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Commercial vessels would be unaffected except when the bridge is unattended. During the periods of time when the bridge is unattended, there is little or no significant navigation on the river. The periods of time when the bridge opens for the passage of pleasure craft on a regulated schedule should help relieve the problem of land traffic tie-ups due to the random openings of the draw while still allowing recreational boaters to navigate the river. Since the impact of this proposal is expected to so minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Requirements

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended as follows:

PART 117—DRAWBRIDGE REQUIREMENTS

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

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. It is proposed that Part 117 be amended by adding a new section, § 117.850, under the listing for the State of Ohio to read as follows:

§ 117.850 Black River.

The draw of the Erie Avenue bridge, mile 0.6 at Lorain, shall open on signal excepts as follows:

(a) From April 1 through November 30—

(1) From 7 a.m. to 6 p.m., Monday through Friday, except legal holidays, the draw need open only on the hour and half-hour for pleasure craft; however, the draw need not open for pleasure craft at 8 a.m., 3 p.m., 4 p.m. and 5 p.m.

(2) From 11 a.m. to 6 p.m., Saturdays, Sundays and legal holidays, the draw need open only on the hour and half-hour for pleasure craft.

(3) From 11 p.m. to 7 a.m., seven days a week and legal holidays, no bridgetender is required to be in constant attendance and the bridge shall open on signal if at least a one hour advance notice is given.

(b) From December 1 through March 31, the draw shall open on signal if at least a twelve hour advance notice is given.

(c) At all times, the draw shall open as soon as possible for public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

Dated: March 11, 1986.

A. M. Danielsen,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 86-6171 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 183

[CGD 85-098]

Boating Safety; Fuel System Standard

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard proposes to amend its regulations on fuel systems for recreational boats by incorporating SAE Standard J1527DEC85 instead of SAE Standard J30C in Subpart J of Part 183. Under the proposal, the definitions and performance requirements for "USCG Type A" and "USCG Type B" fuel hose would be changed because the increasing level of aromatics in fuel and the use of alcohols has raised safety questions over the permeation rates and longevity of hose meeting only the minimum requirements of the present standard incorporated by reference. The intended effect of the proposed amendments is to specify four grades of fuel hose that are more resistant to alcohol permeation. Hoses used for fuel fill and vent lines would not have to offer as high a degree of resistance to alcohol permeation as hoses used for fuel distribution lines. Additional editorial changes would be made to Subpart A of Part 183 to reflect changes in the applicability of the part and to the names and addresses of organizations whose standards are incorporated by reference in Subpart J.

DATES: Comments must be received on or before June 18, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), [CGD 85-098], U.S. Coast Guard; Washington, DC 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public and Consumer Affairs (G-BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 426-1065, between 8 a.m., and 4 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD 85-098] and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelop is enclosed.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Discussion of the Proposed Amendment

The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The Council voted in favor of a proposed rule for changing the incorporation by reference from SAE Standard J30C to SAE Standard J1527DEC85 in the Fuel System Standard. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The minutes of the meetings are available from the Execitive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, Washington, DC 20593.

The increasing level of aromatics and the use of alcohols in fuel has raised safety questions over the permeation rates and longevity of hose meeting only the minimum requirements of the Society of Automotive Engineers (SAE) Standard J30C, incorporated by reference in § 183.505 of the Fuel Systems Standard. While alcohol boosts the octane level of gasoline, it also attacks rubber fuel hoses. Nitrile rubber fuel hoses, the most common fuel hose material used for a number of years, suffer increased swelling and elongation when soaked in alcohol-gasoline blends. Tests indicate that ethanol blended fuels may double the permeation rate in marine fuel hoses and methanol blended fuels may increase permeation by as much as two and one-half times. Under the proposal, SAE Standard J1527DEC85 would replace the existing reference to SAE Standard J30C. SAE Standard J1527DEC85 establishes a permeation rate for fuel distribution lines which is one-sixth of that specified for hose meeting SAE Standard J30C. These hoses are designated Class 1 and are marked USCG Type A1 or B1. SAE Standard J1527DEC85 also establishes a permeation rate for fuel fill and tank vent hoses which is one-half of that specified for hose meeting SAE Standard J30C. The permeation rate for these hoses is less stringent because normally they do not hold fuel for more than a few minutes. These hoses are designated Class 2 and are marked USCG Type A2 or Type B2. Manufacturers installing fill and vent lines therefore would be permitted to use either USCG Type A1, B1, A2 or B2 hoses depending upon other conditions specified in the regulations.

In SAE Standard J1527DEC85 the permeation rate is expressed in terms of the amount of fuel lost through the walls of the hose in 24 hours. Class 1, for fuel distribution lines, permits 100 grams of fuel loss per square meter of inside surface of the hose. Class 2, for fill and vent hoses, permits 300 grams. American Society for Testing and Materials (ASTM) Reference fuel "C" is used for the testing.

Since applicable portions of the Federal Boat Safety Act of 1971 has been recodified as Chapter 43 of Subtitle II of Title 46 of the United States Code

(U.S.C.), § 183.1 would be revised to show that Part 183 prescribes standards and regulations for boats and associated equipment to which 46 U.S.C. 4302 applies. The authority citation for Part 183 is being revised to reflect the recodification.

A new § 183.5 would be added which lists material approved for incorporation by reference in Part 183. Material currently approved for incorporation by reference is listed in the Finding Aids section of Chapter I of Title 33, which is not a part of the regulations. Editorial changes would be made to reflect the correct name of the organization which publishes AMCA Standard 210-74, the Air Movement and Control Association; the correct address for the Institute of Electrical and Electronic Engineers, Inc. which publishes IEEE Standard 45; and the correct address for the National Fire Protection Association which publishes NFPA No. 70.

Section 183.505 contains definitions for "USCG Type A" and "USCG Type B" fuel hose. Under the proposal, "USCG Type A1 and Type A2" and "USCG Type B1 and Type B2", which refer to different degrees of resistance to permeation, would replace the existing references in §§ 183.505, 183.528, 183.532, 183.540, 183.558, 183.568 and 183.590.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. It is estimated that the proposal to change the incorporation by reference in the Fuel Systems Standard from SAE Standard J30C to SAE Standard J1527DEC85 and the definitions for "USCG Type A" and "USCG Type B" fuel hose would result in an increased cost for fuel hose of approximately $.20 per foot. It is further estimated that 100,000 new boats would be affected annually by this rulemaking and that the average boat contains about 10 feet of fuel hose. Therefore, this rule, if promulgated, would result in a total annual cost to the industry of $200,000 or approximately $2.00 per boat. Since this rule, if promulgated, would reduce the possibility of fires and explosions caused by fuel hoses which leak fuel or vapor due to alcohol permeation, the Coast Guard considers this a minimal increase in the cost of manufacturing a boat.

Since the impact of this proposal is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects for 33 CFR Part 183

Marine safety.

In consideration of the foregoing, the Coast Guard proposes to amend Part 183 of Title 33, Code of Federal Regulations to read as follows:

PART 183—BOATS AND ASSOCIATED EQUIPMENT

1. The authority citation for Part 183 is revised to read as follows (all other authority citations in the Subparts of Part 183 are removed):

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. § 183.1 is revised to read as follows:

§ 183.1 Purpose and applicability.

This part prescribes standards and regulations for boats and associated equipment to which 46 U.S.C Chapter 43 applies and to which certification requirements in Part 181 of this subchapter apply.

3. Part 183 is amended by adding a new § 183.5 to subpart A to read as follows:

§ 183.5 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Incorporated by Reference", which appears in the Finding Aids section of this volume. The table contains citations of the particular sections of this part where the material is incorporated and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the United States Coast Guard Boating Safety Division, Washington, DC 20593.

(b) The materials approved for incorporation by reference in this part are:

Air Movement and Control Association

30 W. University Drive, Arlington Heights, IL 60004

AMCA 210-74—Laboratory Methods of Testing Fans for Ratings—1974

American Society for Testing and Materials

1916 Race Street, Philadelphia, PA 19103

ASTM D-471—Rubber Property—Effect of Liquids—1979

ASTM D-1622—Apparent Density of Rigid Cellular Plastics—1975

ASTM D-1621—Compressive Properties of Rigid Cellular Plastics—1975

Naval Publications Forms Center

Customer Service—Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120

MILSPEC-P-21929B—Plastic Material, Cellular Polyurethane, Foam-In-Place, Rigid—1970

Society of Automotive Engineers, Inc.

400 Commonwealth Drive, Warrendale, PA 15096

SAE J378—Marine Engine Wiring—1978

SAE J557—High Tension Ignition Cable—1968

SAE J1127—Battery Cable—1980

SAE J1128—Low Tension Primary Cable—1975

SAE J1527DEC85—Marine Fuel Hoses—1985

Underwriter's Laboratories, Inc.

333 Pfingsten Road, Northbrook, IL 60062

UL 83—Standard for Thermoplastic Insulated Wires—1980

UL 1114—Standard for Marine Use: Flexible Fuel Line Hose—1979

UL 1128—Marine Blowers—1977

National Fire Protection Association

Batterymarch Park, Quincy, MA 02269

NFPA No. 70—National Electric Code—Articles 310 & 400—1981

Institute of Electrical and Electronics Engineers, Inc.

445 Hoes Lane, Piscataway, NJ 08854

IEEE 45-1977—Cable Construction—1977

4. Section 183.505 is amended by removing the definitions for "USCG Type A Hose", and "USCG Type B Hose" and by adding the following new definitions.

§183.505 Definitions

* * * * *

"USCG Type A1" hose means hose that has a permeation rating of 100 grams or less fuel loss per square meter of interior surface and meets the performance requirements of:

(1) SAE Standard J1527DEC85 and the fire test in § 183.590; or

(2) Underwriters' Laboratories, Inc. (UL) Standard 1114.

"USCG Type A2" hose means hose that has a permeation rating of 300 grams or less fuel loss per square meter of interior surface and meets the performance requirements of SAE Standard J1527DEC85 and the fire test in § 183.590;

"USCG Type B1" hose means hose that has a permeation rating of 100 grams or less fuel loss per square meter of interior surface and meets the performance requirements of SAE Standard J1527DEC85.

"USCG Type B2" hose means hose that has a permeation rating of 300 grams or less fuel loss per square meter of interior surface and meets the

performance requirements of SAE Standard J1527DEC85.

5. § 183.528, paragraph (b) is revised to read as follows:

§ 183.528 Fuel stop valves.

* * * * *

(b) If tested in accordance with the fire test under § 183.590, a fuel stop valve installed in a fuel line system requiring metallic fuel lines or "USCG Type A1" or "USCG Type A2" hose must not leak fuel.

6. In § 183.532 paragraph (b) is revised to read as follows:

§ 183.532 Clips, straps and hose clamps.

* * * * *

(b) If tested in accordance with the fire test under § 183.590, a clip, strap or hose clamp installed on a fuel line system requiring metallic fuel lines or "USCG Type A1" or "USCG Type A2" hose must not separate under a one pound tensile force.

7. In § 183.540, paragraphs (a) and (b)(1) are revised to read as follows:

§ 183.540 Hoses: Identification.

(a) Each "USCG Type A1," USCG Type A2," "USCG Type B1," and "USCG Type B2" hose must be identified by the manufacturer by a marking on the hose.

(b) * * *

(1) The statement "USCG TYPE (insert A1 or A2 or B1 or B2)."

* * * * *

8. In § 183.558, paragraph (a) and paragraph (b)(1) and the introductary text of (b) (2) are revised to read as follows:

§ 183.558 Hoses and connections.

(a) Each hose between the fuel pump and the carburetor must be "USCG Type A1" hose.

(b) * * *

(1) "USCG Type A1" or "USCG Type A2" hose; or

(2) "USCG Type A1" or "USCG Type A2" or "USCG Type B1" or "USCG Type B2" hose, if no more than five ounces of fuel is discharged in 2½ minutes when:

* * * * *

9. In § 183.568, paragraph (c) introductary text is revised to read as follows:

§ 183.568 Anti-siphon protection.

* * * * *

(c) Provided that the fuel tank top is below the level of the carburetor inlet, be metallic fuel lines meeting the construction requirements of § 183.538 or "USCG Type A1" hose, with one or two manual shutoff valves installed as follows:

* * * * *

10. In § 183.590, paragraph (a)1) is revised to read as follows:

§ 183.590 First test.

(a) * * *

(1) Fuel stop valves, "USCG Type A1" or "USCG Type A2" hoses, clips, straps and hose clamps are tested in a fire chamber.

* * * * *

Dated: March 17, 1986.

T.T. Matteson,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 86-6169 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 323 and 326

Proposal To Amend Permit Regulations for Controlling Certain Activities in the Waters of the United States

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to amend 33 CFR Part 326 to reflect the sequence of enforcement actions, to clarify ambiguous procedures and language, and to provide district engineers with the flexibility needed to resolve violations in the most effective manner and to be able to concentrate existing staff resources on the most critical enforcement actions. Some procedures in this part would be revised to provide for a more practical approach to certain enforcement problems. The Army is also proposing changes to 33 CFR Part 323 in response to recent court decisions. These changes reflect the Army's policy regarding *de minimis* or incidental soil movement occurring during normal dredging operations.

DATE: Written comments must be received by April 21, 1986.

ADDRESS: Office of the Chief of Engineers, ATTN: DAEN-CWO-N, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT:

Mr. Chuck Foster

or

Mr. Jack Chowning, Regulatory Branch, (202) 272-0199.

SUPPLEMENTARY INFORMATION:

Proposed Changes

Part 323—Permits for Discharges of Dredged or Fill Materials Into Waters of the United States

Section 323.2(j): A sentence would be added to this section to clarify our longstanding policy that *de minimis* or incidental soil movement occurring during normal dredging operations, such as the drippings from a dragline bucket, are not considered to be a discharge of dredged material for purposes of section 404. This policy was formally announced in Regulatory Guidance Letter 81-4, issued on June 3, 1981. All the guidance letters issued in 1981 expired December 31, 1983. To the extent that the decision of the U.S. District Court for the Northern District of Ohio in *Reid* v. *Marsh*, No. C-81-690 (N.D. Ohio, 1984), could be construed as including a holding inconsistent with this longstanding Corps of Engineers interpretation of section 404, we believe that it can be explained by our failure to express the *de minimis* rule clearly in Corps regulations. Thus the proposed rule includes a provision clearly stating that *de minimis* or incidental soil movement occurring during normal dredging operations do not require 404 permits.

Part 326—Enforcement

Title: The title of this part would be shortened from "Enforcement, Supervision and Inspection" to simply "Enforcement."

Section 326.1: This section would be modified to provide a general outline of Part 326.

Section 326.2: This section would be added to identify the general policy objective of the Corps' enforcement program.

Section 326.3: This section would generally include the procedures previously found in §§ 326.2 and 326.3. Most of the changes relate to improving clarity, organization and flexibility. However, the revisions in this section would also provide new legal options for enforcing the orders, directives, and decisions of district engineers; and a provision for interim protective measures where simply stopping the illegal work in progress would be inappropriate.

Section 326.4: This section would generally include procedures previously found in § 326.5. In § 326.4(c), we would introduce revisions to fully implement section 404(s) of the Clean Water Act.

Section 326.5: This section would generally include the procedures previously found in § 326.4. These procedures would be rewritten to make

clear the discretionary nature, under the relevant statutes, of the district engineer's selection of the appropriate legal action to pursue. Further, § 326.5(e) would be added to allow district engineers to close case records on those violations that do not warrant legal action or the processing of a permit. Typically, enforcement actions on such minor violations, not involving repeat offenders, can be resolved with appropriate correspondence.

Note 1.—The Department of the Army has determined that the proposed regulation revisions do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12291.

Note 2—The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 323

Navigation, Water pollution control, Waterways.

33 CFR Part 326

Investigations, Intergovernmental relations, Law enforcement, Navigation, Water pollution control, Waterways.

Dated: March 6, 1986.

Approved:

Robert K. Dawson,

Assistant Secretary of the Army (Civil Works).

Accordingly, the Department of the Army proposes to amend 33 CFR Parts 323 and 3261 as set forth below:

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

1. The authority citation for 33 CFR Part 323 continues to read:

Authority: 33 U.S.C. 1344.

2. Section 323.2 is amended by revising paragraph (j) to read:

§ 323.2 Definitions.

* * * * *

(j) The term "discharge of dredged material" means any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps of Engineers. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products; see § 323.4 for the definitions. The term does not include *de minimis* or incidental soil movement occurring during normal dredging operations, such as the drippings from a dragline bucket, backhoe, clamshell, or other similar types of equipment.

* * * * *

3. Part 326 is revised to read:

PART 326—ENFORCEMENT

Sec.
326.1 Purpose.
326.2 Policy.
326.3 Unauthorized activities.
326.4 Supervision of authorized activities.
326.5 Legal action.

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 326.1 Purpose.

This regulation prescribes enforcement policies (Section 326.2) and procedures applicable to activities performed without required Department of the Army permits (Section 326.3) and to activities not in compliance with the terms and conditions of issued Department of the Army permits (Section 326.4). Procedures for initiating legal actions are prescribed in § 326.5.

§ 326.2 Policy.

Enforcement, as part of the Corps' overall regulatory program, is based on a policy of regulating the waters of the United States by discouraging activities that have not been properly authorized and by requiring corrective measures, where appropriate, to ensure those waters are not misused and to maintain the integrity of the program. There are several methods discussed in the remainder of this part which can be used either singly or in combination to implement this policy, while making the most effective use of the enforcement resources available.

§ 326.3 Unauthorized activities.

(a) *Surveillance.* To detect unauthorized activities requiring permits, district engineers should make the best use of all available resources. Corps employees; members of the public; and representatives of state, local, and other Federal agencies should be encouraged to report suspected violations. Additionally, district engineers should consider developing joint surveillance procedures with Federal, state, or local agencies having similar regulatory responsibilities, special expertise, or interest.

(b) *Initial investigation.* District engineers should take steps to investigate suspected violations in a timely manner. The scheduling of investigations will reflect the nature and location of the suspected violations, the anticipated impacts, and the most effective use of inspection resources available to the district engineer. These investigations should confirm whether a violation exists, and if so, will identify the extent of the violation and the parties responsible.

(c) *Formal notification to parties responsible for violations.* Once the district engineer has determined that a violation exists, he should take appropriate steps to notify the responsible parties.

(1) If the violation involves a project that is not complete, the district engineer's notification should be in the form of a cease and desist order prohibiting any further work pending resolution of the violation in accordance with the procedures contained in this part. See subparagraph (4) below for exception to this procedure.

(2) If the violation involves a completed project, the district engineer's notification should normally direct the parties responsible not to initiate any additional work before obtaining required Department of the Army authorizations.

(3) All notifications should identify the relevant statutory authorities and will direct the responsible parties to submit any additional information that the district engineer may need at that time to determine what initial corrective measures, if any, are required; further information may be requested, as needed, in the future.

(4) In situation which would, if a violation were not involved, qualify for emergency procedures pursuant to 33 CFR 325.2(e)(4), the district engineer may decide it would not be appropriate to direct that the unauthorized work be stopped. Therefore, in such situations, the district engineer may, at his discretion, allow the work to continue, subject to appropriate limitations and conditions as he may prescribe, while the violation is being resolved in accordance with the procedures contained in this part.

(5) When an unauthorized activity requiring a permit has been undertaken by American Indians (including Alaskan natives, Eskimos, and Aleuts, but not including Native Hawaiians) on reservation lands or in pursuit of specific treaty rights, the district

engineer should use appropriate means to coordinate proposed directives and orders with the Assistant Chief Counsel for Indian Affairs (DAEN–CCI).

(6) When an unauthorized activity requiring a permit has been undertaken by an official acting on behalf of a foreign government, the district engineer should use appropriate means to coordinate proposed directives and orders with the Office, Chief of Engineers, ATTN: DAEN–CCK.

(d) *Initial corrective measures.* (1) The district engineer should, in appropriate cases, depending upon the potential impacts of the unauthorized completed work, solicit the views of the Environmental Protection Agency; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service, and other Federal, state, and local agencies to facilitate his decision on what initial corrective measures are required. If the district engineer determines as a result of his investigation, coordination, and preliminary evaluation that initial corrective measures are required, he should issue an appropriate order to the parties responsible for the violation. In determining what initial corrective measures are required, the district engineer should consider whether serious jeopardy to life, property, or important public resources (see 33 CFR 320.4) may be reasonably anticipated to occur during the period required for the ultimate resolution of the violation. In his order, the district engineer will specify the initial corrective measures required and the time limits for completing this work. In unusual cases where initial corrective measures substantially eliminate all current and future detrimental impacts resulting from the unauthorized work, further enforcement actions should normally be unnecessary. For all other cases, the district engineer's order should normally specify that compliance with the order will not foreclose the Government's options to initiate appropriate legal action or to later require the submission of a permit application.

(2) An order requiring corrective measures that resolve the violation may also be issued by the district engineer in situations where an application for an after-the-fact permit cannot be accepted or where such acceptance would not be appropriate (see § 326.3(3)). However, such orders will be issued only when the district engineer has reached an independent determination that such measures are necessary and appropriate.

(e) *After-the-fact permit applications.* (1) Following the completion of any required initial corrective measures, the district engineer will accept an after-the-fact permit application unless he determines that one of the exceptions listed in subparagraphs i–v below is applicable. Applications for after-the-fact permits will be processed in 33 CFR Parts 320–325. Situations where no permit application will be processed or where the acceptance of a permit application must be deferred are as follows:

(i) No permit application will be processed for initial corrective measures (§ 326.3(d)) undertaken at the direction of the district engineer.

(ii) No permit application will be processed when restoration of the waters of the United States has been completed that eliminates current and funture deterimental impacts to the statisfaction of the district engineer.

(iii) No permit application will be accepted in connection with a violation where the district engineer determines that legal action is appropriate (§ 326.5(a)) until such legal action has been completed.

(iv) No permit application will be accepted where a Federal, state, or local authorization or certification, required by Federal law, has already been denied.

(v) No permit application will be accepted nor will the processing of an application be continued when the district engineer is aware of litigation that has been initiated by other Federal, state, or local regulatory agencies, unless he determines that concurrent processing of an after-the-fact permit application is clearly appropriate.

(2) Upon completion of his review in accordance with 33 CFR Parts 320–325, the district engineer will determine if a permit should be issued, with special conditions if appropriate, or denied. In reaching a decision to issue, he must determine that the work involved is not contrary to the public interest, and if section 404 is applicable, that the work also complies with the Environmental Protection Agency's section 404(b)(7) guidelines. If he determines that a denial is warranted, his notification of denial should prescribe any final corrective actions required and should establish a reasonable period of time for the applicant to complete such actions unless he determines that further information is required, the final corrective measures may be specified at a later date. If an applicant refuses to undertake prescribed corrective actions ordered subsequent to permit denial or refuses to accept a conditioned permit, the district engineer may initiate legal action in accordance with § 326.5.

(f) *Combining steps.* The procedural steps in this section are in the normal sequence. However, these regulations do not prohibit the streamlining of the enforcement process through the combining of steps.

(g) *Coordination with EPA.* In all cases where the district engineer is aware that EPA has issued an order under section 309 of the Clean Water Act or that EPA has referred, or is preparing to refer, a violation to the Department of Justice, he should consult with EPA, as appropriate, to attempt to avoid conflict.

§ 326.4 Supervision of authorized activities.

(a) *Inspections.* District engineers should take reasonable measures to inspect permitted activities to insure that these activities comply with specified terms and conditions. To supplement inspections by their enforcement personnel, district engineers should encourage their other personnel; members of the public; and interested state, local, and other Federal agency representatives to report suspected violations of Corps permits. To facilitate inspections, district engineers may, in appropriate cases, require that copies of ENG Form 4336 be posted conspicuously at the sites of authorized activities and will make available to all interested persons information on the terms and conditions of issued permits. The U.S. Coast Guard will inspect permitted ocean dumping activities pursuant to section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(b) *Inspection expenses.* The expenses incurred in connection with the inspection of permitted activities will normally be paid by the Federal Government unless daily supervision or other unusual expenses are involved. In such unusual cases, the district engineer may condition permits to require permittees to pay inspection expenses pursuant to the authority contained in section 9701 of Pub. L. 97–258 (33 U.S.C. 9701). The collection and disposition of inspection expense funds obtained from applicants will be administered in accordance with the relevant Corps regulations governing such funds.

(c) *Non-compliance.* If a district engineer determines that a permittee has violated the terms or conditions of the permit and that the violation is sufficiently serious to require an enforcement action, then normally he should: (1) First contact the permittee; (2) request corrected plans reflecting actual work, if needed; and (3) attempt to resolve the violation. Resolution of the violation may take the form of the permitted project being voluntarily brought into compliance or of a permit

modification (33 CFR 325.7(b)). If a mutually agreeable solution cannot be reached, a written order requiring compliance should normally be issued and delivered by personal service. Issuance of an order is not, however, a prerequisite to legal action. If an order is issued, it will specify a time period of not more than 30 days for bringing the permitted project into compliance, and a copy will be sent to the appropriate state official pursuant to section 404(s)(2) of the Clean Water Act. If the permittee fails to comply with the order within the specified period of time, the district engineer may consider using the suspension/revocation procedures in 33 CFR 325.7(c) and/or he may recommend legal action in accordance with § 326.5.

§ 326.5 Legal action.

(a) *General.* For cases the district engineer determines to be appropriate, he will recommend criminal or civil actions to obtain penalties for violations, compliance with the orders and directives (§§ 326.3(c–d) and 326.4(c)) he has issued, or other relief as appropriate. Appropriate cases for criminal or civil action include, but are not limited to, violations which, in the district engineer's opinion, are willful, repeated, or flagrant.

(b) *Preparation of case.* If the district engineer determines that legal action is appropriate, he will prepare a litigation report or such other documentation that he and the local U.S. Attorney have mutually agreed to, which contains an analysis of the information obtained during his investigation of the violation or during the processing of a permit application and a recommendation of appropriate legal action. The litigation report or alternative documentation will also recommend what, if any, restoration or mitigative measures are required and will provide the rationale for any such recommendation.

(c) *Referral to the local U.S. Attorney.* Except as provided in paragraph (d) below, district engineers are authorized to refer cases directly to the U.S. Attorney. Because of the unique legal system in the Trust Teritories, all cases over which the Department of Justice has no authority will be referred to the Attorney General for the Trust Territories. Information copies of all letters of referral shall be forwarded to the appropriate division counsel, the Office, Chief of Engineers, ATTN: DAEN–CCK, and the Office of the Assistant Secretary of the Army (Civil Works).

(d) *Referral to the Office, Chief of Engineers.* District engineers will forward litigation reports through division offices with recommendations to the Office, Chief of Engineers, ATTN: DAEN–CCK, for all cases that quality under the following criteria:

(1) Significant precedential or controversial questions of law or fact;

(2) Discharges of dredged or fill materials into the waters of the United States that are not interstate waters or navigable waters of the United States or part of a surface tributary system to these waters;

(3) Requests for elevation to the Washington level by the Department of Justice;

(4) Violations of section 9 of the Rivers and Harbors Act of 1899;

(5) Violations of section 103 the Marine Protection, Research and Sanctuaries Act of 1972;

(6) All cases involving vioaltions by American Indians (original of litigation report to DAEN–CCI with copy to DAEN–CCK) on reservation lands or in pursuit of specific treaty rights;

(7) All cases involving violations by officials acting on behalf of foreign governments; and

(8) Cases requiring action pursuant to subparagraph (e) below.

(e) *Legal option not available.* In cases where the local U.S. Attorney declines to take legal action, it would be appropriate for the district engineer to close the enforcement case record unless he believes that the case warrants special attention. In that situation, he may forward a litigation report to the Office, Chief of Engineers, ATTN; DAEN–CCK, for direct coordination through the Office of the Assistant Secretary of the Army (Civil Works) with the Department of Justice. Further, the case record should not be closed if the district engineer anticipates that further administrative enforcement actions, taken in accordance with the procedures prescribed in this part, will identify remedial measures which, if not complied with by the parties responsible for the violation, will result in appropriate legal action at a later date.

[FR Doc. 86–6076 Filed 3–19–86; 8:45 am]

BILLING CODE 3710–06–M

Notices

Federal Register
Vol. 51, No. 54
Thursday, March 20, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-012]

Viruses, Serums, Toxins, and Analogous Products; Amendment of the Virus-Serum-Toxic Act of 1913

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document gives notice of new licensing requirements under the Virus-Serum-Toxic Act of 1913, 21 U.S.C. 151–158. The Act was amended by the Food Security Act of 1985, approved December 23, 1985. The amendment requires that, unless exempted, all producers of veterinary biological products shipping such products anywhere in the United States or exporting them, must be licensed by the Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8674.

SUPPLEMENTARY INFORMATION: Effective December 23, 1985, it is unlawful for any person, not exempted by regulation, to ship a veterinary biological product anywhere in the United States, or to export such product unless that product is prepared "under and in compliance with regulations prescribed by the Secretary of Agriculture, at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Agriculture . . .". The amendment to the Virus-Serum-Toxin Act provides that, in the case of a person preparing a veterinary biological product solely for intrastate commerce or for export during the 12-month period ending December 23, 1985, such product will not be considered to be in violation of the Act as a result of its not being produced under license until the 1st day of the 49th month following December 23, 1985, that is, until January 1, 1990.

This notice is issued to inform the biologics industry and other interested persons that the 4-year exemption granted under the Act is not automatic and must be claimed by the person, or corporation affected in the form and manner prescribed by the Secretary. All such claims for the exemption must be made by the 1st day of the 13th month following December 23, 1985, which is January 1987.

The Department is in the process of developing rules which specifically address the exemption process and other requirements under the Act. Pending issuance of these rules and in order to facilitate implementation of the new amendments and the 4-year exemption provision, a person, firm, or corporation may claim the exemption by filing an application for an establishment license and a product license for each product which qualifies for the exemption. The filing of such applications shall be deemed by the Department to satisfy the statutory requirements for claiming the exemption. Rules and regulations with respect to licensing may be found at 9 CFR 101.1 *et seq.* Application forms, along with instructions and assistance, may be obtained by calling or writing to Dr. David A. Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8245.

Done at Washington, DC, this 17th day of March 1986.

J.K. Atwell,
Deputy Administrator, Veterinary Services.

[FR Doc. 86-6138 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Environmental Statements; Dorchester Village RC&D Measure Plan, Georgia

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dorchester Village RC&D Measure Plan, Liberty County, Georgia.

FOR FURTHER INFORMATION CONTACT: B.C. Graham, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 404–546–2273.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns are flooding which causes economic losses and social well being losses to area residents. The planned works of improvement include two flood prevention channels.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, Federal, State, and local agencies, and interested parties. Basic data developed during the environmental assessment are on file and may be reviewd by contacting Mr. B.C. Graham. A limited number of copies of the environmental assessment are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: March 12, 1986.

B.C. Graham,
State Conservationist.

[FR Doc. 86-6052 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statements; South Delta Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the South Delta Watershed, Humphreys, Sharkey, and Yazoo Countries, Mississippi.

FOR FURTHER INFORMATION CONTACT: A.E. Sullivan, State Conservationist, Soil Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601-965-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, A.E. Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention, and drainage. Alternatives under consideration to reach these objectives include systems for conservation land treatment and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from A.E. Sullivan, State Conservationist, at the above address.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: March 13, 1986.

A.E. Sullivan,

State Conservationist.

[FR Doc. 86-6064 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public 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 Subcommittee of the Colorado Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 9:00 p.m., on April 11, 1986, at the Holiday Inn, 800 Camino Del Rio, Durango, Colorado. The purpose of the meeting is to conduct a community forum to gather information on problems related to Hispanic dropouts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 14, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-6111 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

Florida Advisory Committee; Meeting Amendment

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 Florida Advisory Committee to the Commission previously scheduled for April 3, 1986, convening at 1:00 p.m. and adjourning at 6:00 p.m., at the Biscayne Bay Marriott Hotel, Miami, Florida has a new meeting date and time.

The meeting location will remain the same. The date of the meeting will be April 25, 1986, convening at 10:30 a.m. and adjourning at 4:00 p.m.

Dated at Washington, DC, March 14, 1986.

Ann E. Goode,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-6112 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

Maine Advisory Committee; Agenda and Notice of Public 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 Maine Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on April 10, 1986, at the Holiday Inn, Board Room, Western Avenue, Augusta, Maine. The purpose of the meeting is to continue discussion of the proposed project concept on the civil rights of Maine Indians.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Morgan or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 14, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-6109 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; Agenda and Notice of Public 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 Missouri Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 9:00 p.m. on April 9, 1986, and convene at 8:30 a.m. and adjourn at 12:00 noon on April 10, 1986, at the City Hall, Daniel Boone Building, 3rd Floor, 701 East Broadway, Columbia, Missouri. The purpose of the meeting is to review the status of civil rights in Missouri and engage in future program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Morrie Zimring or Melvin Jenkins Director of the Central

States Regional Office at (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 14, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-6110 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

Washington Advisory Committee; Agenda and Notice of Public 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 Washington Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on April 7, 1986, at the Federal Building, Room 2886, 915 Second Avenue, Seattle, Washington. The purpose of the meeting is to engage in future program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Roger Manseth or Susan McDuffie, Director of the North Western Regional Office at (206) 442-1245, (TDD 206/442-4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 17, 1986.

Ann Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-6108 Filed 3-19-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 9-86]

Proposed Foreign-Trade Zone—Franklin County, OH, Within the Columbus Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Rickenbacker Port Authority, a political subdivision of the State of Ohio, requesting authority to establish a general-purpose foreign-trade zone in Franklin County, Ohio, within the Columbus Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 7, 1986. The applicant is authorized to make this proposal under section 1743.11 of the Ohio Revised Code.

The proposed foreign-trade zone involves the 1642-acre Rickenbacker Air Industrial Park, located at Alum Creek Road and Route 317 in southeastern Franklin County. The project has existing warehouse buildings as well as open space for firms requiring their own facilities. Diversified/Turner Company, which is the airpark developer, has been designated to operate the zone.

The application contains evidence of the need for zone services in the Columbus area. Several firms have indicated an interest in using zone procedures for general warehousing and for handling products such as truck chassis, utility vehicles and pharmaceuticals. No manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel Robert B. Wilson, District Engineer, U.S. Army Engineer District Huntington, 502 8th Street, Huntington, West Virginia 25701.

As part of its investigation, the examiners committee will hold a public hearing on April 16, 1986, beginning at 9:00 a.m., in the Main Conference Room of the Columbus Area Chamber of Commerce Building, 37 North High Street, Columbus.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by April 9. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through Mav 16, 1986.

A copy of the application and accompanying exhibits will be ava lable during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Port Columbus Int'l Airport, 4600 17th Avenue, Rm 221, Columbus, Ohio 43219.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: March 14, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-6094 Filed 3-19-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[Case No. OEE-2-85]

Werner Scheele et al.; Export Privileges

In the matter of Werner Scheele, individually and doing business as CHB COMPUTER HARDWARE VERTRIEBS GmbH a/k/a CHB GmbH and COMSERV GmbH and COMSERV COMPUTER LEASING GmbH with addresses at 427 Langenberger Strasse, 4300 Essen 14, Federal Republic of Germany and 449-451 Langenberger Strasse, 4300 Essen 14, Federal Republic of Germany, BENGT ANDERSSON, individually with an address at Bodalsvagen 20 XII, Lidingo, Sweden, and doing business as BEA Computer, Vasagatan 15-17, S-111 20 Stockholm, Sweden and Beacom International AB, Vasagatan 15-17, S-111 20 Stockholm, Sweden, VEB Deutrans International, Sassnitzgatan 2, 231 00 Trelleborg, Sweden, respondents.

Decision and Order

By letter dated February 17, 1986, Werner Scheele, on behalf of himself and CHB Computer Hardware Vertriebs GmbH, also known as CHB GmbH, and Comserv Computer Leasing GmbH (hereinafter collectively referred to as "Scheele") appealed the renewal of the temporary denial order ("TDO") issued against them by the Deputy Assistant Secretary for Export Enforcement on February 6, 1986 (51 FR 5389 (February 13, 1986)). The appeal was filed in the Office of Administrative Law Judges on February 28, 1986. In accordance with § 388.19 of the Export Administration Regulations (15 CFR Parts 368 through

399 (1985)) (the "Regulations"),[1] the Office of Export Enforcement, International Trade Administration, United States Department of Commerce (the "Department") timely submitted its response to Scheele's appeal.

In its Response, the Department, without indicating reasons therefor, stated that it did not oppose Scheele's request that the TDO be vacated. The Administrative Law Judge, finding no sufficient basis for maintaining a TDO, also recommended that the TDO be vacated. The Department has stated that it does not intend to file a request for renewal of the TDO on or before March 19, 1986.

Accordingly, pursuant to the authority granted to me by § 388.19 of the Regulations, I hereby vacate, effective immediately, the TDO issued on February 6, 1986, against Werner Scheele, individually and doing business as CHB Computer Hardware Vertriebs GmbH, a/k/a/ CHB GmbH, Comserv GmbH, and Comserv Computer Leasing GmbH, all of Essen, Federal Republic of Germany, and against Bengt Andersson of Lidingo, Sweden, individually and doing business as BEA Computer and Beacom International AB of Stockholm, Sweden, and against VEB Deutrans International of Trelleborg, Sweden. This Order sets forth the sole basis for my decision in this proceeding and shall be published in the **Federal Register**.

Dated: March 13, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-6062 Filed 3-19-86; 8:45 am]

BILLING CODE 3510-25-M

[C-201-009]

Iron-Metal Construction Castings From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 24, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain iron-metal construction castings from Mexico. The review covers the period December 1, 1982 through March 31, 1983 and eight programs.

We gave interested parties an opportunity to comment on the preliminary results. After considering all of the comments received, the Department has determined the bounty or grant during the period of review to be 0.08 percent *ad valorem*, a rate the Department considers to be *de minimis*.

EFFECTIVE DATE: March 20, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 8834) a final determination and countervailing duty order on certain iron-metal construction castings from Mexico. We began this review of the order under our old regulations on May 26, 1983, and sent a questionnaire to the Mexican government on that day. After the promulgation of our new regulations, a group of Mexican exporters, on September 13, 1985, requested that we complete the administrative review, in accordance with section 355.10(a) of the Commerce Regulations. We published the new initiation and preliminary results of administrative review on October 24, 1985 (50 FR 43262). We have now completed the administrative review, in accordance with section 751 of the Tariff Act of 1930.

Scope of the Review

Imports covered by the review are shipments of Mexican iron-metal construction castings, including manhole covers, rings and frames, catch basin frames and grates, cleanout covers and grates, meter boxes, and valve boxes. These castings are commonly called municipal or public works castings. Such merchandise is normally classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated ("TSUSA"). However, alloyed municipal castings are currently classifiable under TSUSA items 657.2540 and 657.2550. After reviewing the petition and the Department's final determination in this case, we do not find any indication of an intent to limit the scope of the order to non-alloyed castings. Therefore, we determine that the order covers municipal or public works castings, whether or not alloyed.

The review covers the period December 1, 1982 through March 31, 1983 and eight programs: (1) FONEI; (2) FOGAIN; (3) state tax incentives; (4) CEDI; (5) CEPROFI; (6) FOMEX; (7) import duty reductions and exemptions; and (8) FOMIN.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioners, we held a public hearing on December 9, 1985.

Comment 1: The petitioners argue that the Department's verification report describes three different methodologies for calculating the benefits from the state tax incentives. The widely differing benefits calculated indicate that those methods are inconsistent. The program involves an exemption from a state tax based on wages, and labor costs should not differ greatly among foundries producing similar castings by similar methods. Further, the Department did not use the amount of exemption that it verified existed for Fundiciones Tijuana. Finally, the Department's practice of weight-averaging each firm's benefit according to its share of exports to the U.S., instead of allocating all firms' benefits over total Mexican exports to the U.S., undervalues the total *ad valorem* benefit because of the Department's greater use of the rounding of numbers. The rounding effectively eliminates the benefits to small producers. This is particularly important in a case like this where the aggregate net bounty or grant is close to the 0.5 percent cutoff for *de minimis* rates.

Department's Position: While lacking parallel data for all firms, the Department used the same methodology for all firms in calculating the benefit from state tax incentives. The Baja California state tax on wages and salaries is by statute equal to 75 percent of the one percent federal housing tax, which is in turn tied to wages and salaries. Five companies were eligible for an exemption from this tax during the period of review. The Mexican government reported that only one of them used the program during the period of review. We conducted verifications at three of the five firms and found that all three used the program. We obtained and verified and actual amount of federal housing taxes that Fundiciones Tijuana paid during the review period and that Arechiga Sarinana paid in 1982. However, we were not able to obtain data on housing taxes from the third verified firm, B.C. 76. Therefore, we used that company's total federal tax liability as a substitute for its housing tax liability. For the two eligible firms that we did not verify, we have now chosen the highest *ad valorem* rate among the

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[1] Parts 387 and 388 of the Regulations were recently amended and republished. *See* 50 FR 53130 (December 30, 1985).

three verified firms and then weight-averaged the two additional rates with the three verified rates according to each firm's share of exports to the U.S.

Labor costs may differ greatly in absolute terms among foundries because the work forces vary substantially in size. Nonetheless, the proportion of the work force (and therefore of the exemption) to the total production of two of the three verified firms is similar. We could not judge the labor costs for B.C. 76, where we had to rely on the total federal tax liability as the basis for our calculations rather than on the federal housing tax liability.

We agree that we used the wrong figure for Fundiciones Tijuana's federal housing tax liability and have recalculated the benefit using the verified amount. In the preliminary results, we used the full 12-month exemption for Arechiga Sarinana. To calculate the benefit for the review period, we have now used one-third of the 1982 figure. Finally, in our weight-averaging in the preliminary results, we calculated the weights for the two unverified firms by using each firm's exports expressed in dollars and total Mexican exports to the U.S. expressed in pesos. We have now used dollar figures for both. After making these adjustments, we determine the total bounty or grant from the program to be 0.04 percent *ad valorem.*

We fail to see how rounding eliminates the benefits to small producers from the aggregate net subsidy. Both the benefit (the numerator) and the exports (the denominator) are correspondingly small. Thus, there is no increased likelihood that benefits of small producers (in contrast to those of large producers) will be eliminated from the calculation. Even extending the numbers in our calculations to six decimal places does not change the total bounty or grant from the program.

Comment 2: The petitioners contend that the Government of Mexico's questionnaire response shows three loans under the FOGAIN program, but that the Department included only two of the loans in its calculations.

Department's Position: We agree and have now included benefits from the third loan, which Arechiga Sarinana obtained in 1980. At that time, the highest rate available under FOGAIN was 21 percent. Using the long-term loan methodology described in the preliminary results, we determine the benefit from all three loans to be 0.02 percent (see also Comment 7).

Comment 3: The petitioners contend that the commerical benchmark for preferential loans should include the effects of prepayment of interest, commissions, and compensating balances. Further, the Department should evaluate the preferential loans in light of payment holidays for such loans.

Department's Position: We agree that the comparison of effective preferential loan terms to effective commercial loan terms is the most appropriate method for measuring the benefit from preferential loans. However, when we do not have information on such practices as prepayment of interest, grace periods, compensating balances, or fees and commissions, we must often rely on a comparison of nominal interest rates. The terms of the FONEI and FOGAIN loans that we examined in this case do not include payment holidays on interest. Furthermore, we have no evidence that prepayment of interest, commissions, or compensating balance requirements are uniform commercial practices in Mexico. Therefore, we have used nominal interest rates to measure the benefits from the FONEI and FOGAIN programs.

Comment 4: The petitioners contend that the benefits from the FOMEX loans found countervailable during the original investigation extend into the current review period because the life of the loans themselves extend into the review period.

Department's Position: We disagree. We consider the benefit from preferential loans to occur when a company realizes the interest saving or "cash-flow" effect. We determined that the exporters did not receive any benefits from FOMEX loans during the current review period because no interest or principal payments on FOMEX loans came due during the period for either new FOMEX loans during the review period or old FOMEX loans still outstanding during the period.

Comment 5: The petitioners state that the Department failed to investigate the use of import duty reductions and exemptions with regard to machinery or parts imported prior to the review period. The Department should allocate such benefits over the useful life of the imported equipment.

Department's Position: We disagree. We consider the benefit from import duty reductions to occur at the time of receipt. A firm realizes the "cash-flow" effect at the time of importation because that is the time it would have had to pay the import duty. The Department has verified that manufacturers of iron-metal construction castings did not receive any import duty reductions or exemptions for imports of machinery or equipment during the period of review. *See* notice of final results of administrative review of countervailing duty order on portland hydraulic cement and cement clinker from Mexico (50 FR 51732, December 19, 1985).

Comment 6: The petitioners contend that, during the period examined in the original investigation as well as the period currently under review, actions of the Mexican government caused the deferral of payments of private loans from U.S. banks. Such rescheduling of foreign debt constitutes a bounty or grant.

Department's Position: The only program during the review period for the rescheduling of private debt in Mexico was the Trust Fund for Coverage of Risks ("FICORCA"). The Department found this program not countervailable in its final affirmative countervailing duty determination on unprocessed float glass from Mexico (49 FR 23097, June 4, 1984). Because we had previously found this program not countervailable, we did not consider it in this review.

Comment 7: The exporters contend that the Department did not use the correct commercial interest rate benchmark for calculating the benefit of one of the FOGAIN loans.

Department's Position: We agree. Arechiga Sarinana obtained two FOGAIN loans in November 1981. We should have used the same 22 percent commercial interest rate benchmark for both loans, the highest rate available under FOGAIN at the time. Using that rate, we have now calculated the benefit from the FOGAIN loans to be 0.02 percent.

Comment 8: The exporters contend that the Department improperly allocated the benefits from FOGAIN and FONEI loans over the value of exports rather than the value of production. The Department has previously determined that FOGAIN and FONEI loans are domestic, rather than export, bounties or grants and that benefits attributable to such loans should be allocated over total sales, rather than export sales. The Department should have used the value of total production as the basis for allocation.

Department's Position: We do not have total sales data. In the preliminary results, we used export sales as the best information for total sales but have now chosen total production to be the best information available. We determine the total benefit from FONEI to be 0.02 percent *ad valorem.* The FOGAIN benefit remains the same because Arechiga Sarinana received the only benefits under FOGAIN and the firm's total exports equalled its total production.

Comment 9: The exporters contend that the Department should revoke the

order. Under the terms of the "Understanding Between the United States and Mexico regarding Subsidies and Countervailing Duties" ("the Understanding") signed on April 23, 1985, Mexico became a "country under the Agreement," as defined in section 701(b) of the Tariff Act. As such, section 303 of the Tariff Act no longer applies to any products from Mexico, and Mexico is entitled to an injury test under section 701 before the Department may impose countervailing duties on any products, including castings.

Alternatively, if the Department persists in holding that section 303 applies to this case, section 303 prohibits the Department from assessing countervailing duties on duty-free products without an affirmative finding of injury if the United States has an international obligation to provide such an injury test. Contrary to the Department's stated belief, the Understanding does require the injury test for pre-existing orders. The Department's distinction between "investigations in progress" (the phrase contained in the Understanding) and existing order would render article 5 of the Understanding superfluous in light of section 102(a) of the Trade Agreements Act of 1979 ("the TAA") and disregard the teachings of the Court of Appeals for the Federal Circuit ("CAFC") in *Al Tech Specialty Steel Corporation* vs. *United States* (754 F. 2d 632 (1984)).

Finally, the United States in the Understanding granted Mexico "most-favored-nation" ("MFN") status. The MFN clause of the Understanding creates an international obligation on the United States to apply the same procedures in countervailing duty proceedings on Mexican products as for products from other countries. The products as for products covered by this order are by U.S. statute duty-free. In two instances involving duty-free products covered by section 303 countervailing duty orders, the Department has refused or preliminarily refused to impose duties. In *Certain Fasteners from India* (47 FR 44129; October 6, 1982), the Department revoked the portion of the order covering duty-free fasteners. In *Carbon Steel Wire Rod from Trinidad and Tobago* (50 FR 19561; May 9, 1985), the Department tentatively determined to revoke the oder because the products became duty-free. The circumstances of those cases are very similar to those of this case and Mexico must receive no less favorable treatment.

Department's Position: We continue to believe that we cannot revoke this countervailing duty order on the basis of the Understanding. While it is true that the United States Trade Representative determined on April 23, 1985, that Mexico became a "country under the Agreement" (50 FR 18335; April 30, 1985), the application of that status was limited by article 5 of the Understanding to countervailing duty proceedings which had not progressed to the issuance of a final determination (and simultaneous order). We have confirmed with the principal U.S. negotiators that the intent of article 5 was to exclude from the application of the Understanding, and hence application of "country under the Agreement" status, orders existing before April 23, 1985. Section 303 continues to apply to such orders.

As to the argument that even if section 303 applies, the Understanding is an international obligation requiring an injury test, once again article 5 precludes application to pre-April 23, 1985 orders. We agree with the exporters that our reading of article 5 provides only the injury test provided by section 102(a) of the TAA; we do not agree that such a reading renders article 5 superfluous. The Understanding states its own limitations. Furthermore, we are in no way disregarding the determination of the CAFC in *Al Tech.* The use of the phrase "investigations in progress" in the Understanding, despite the discussion in the Department's memorandum of October 9, 1985, was not meant to refer to the use of the phrase "investigation" in the TAA or in the TAA amendments to the Tariff Act, and therefore the CAFC discussion of the term "investigation" in *Al Tech* is irrelevant here. The phrase "investigations in progress" is a bilaterally negotiated phrase with clear meaning to the U.S. negotiators.

Finally, the MFN argument cannot be sustained for the same reasons as in the above two arguments. In both *Certain Fasteners from India* and *Carbon Steel Wire Rod from Trinidad and Tobago* (regardless of the ultimate outcome), the countries involved have a clear claim, as GATT members, to the injury test. The only claim of the Government of Mexico is the Understanding, which the U.S. negotiators precluded from applying to pre-April 23, 1985 orders.

For additional information, see notice of final results of administrative review of countervailing duty order on portland hydraulic cement and cement clinker from Mexico (50 FR 51732, December 19, 1985).

Final Results of Review

After reviewing all of the comments received, we determined the total bounty or grant to be 0.08 percent *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis.*

The Department will instruct the Customs Service not to assess countervailing duties for shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after December 16, 1982, the date of our affirmative preliminary determination (47 FR 56377), and exported on or before March 31, 1983.

The Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

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 355.10; 50 FR 32556, August 13, 1985).

Dated: March 14, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-6121 Filed 3-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

March 17, 1986.

On March 6, 1986 a notice was published announcing a partially closed meeting of the Management-Labor Textile Advisory Committee on March 27, 1986 (51 FR 7844).

The date of this meeting has been changed to March 25, 1986 in Room 6802, Herbert C. Hoover Building, at 1:00 p.m.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-6116 Filed 3-19-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held Tuesday, 29 April 1986 from

9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine McDonald, Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia 22311, (703) 824-5531.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

March 17, 1986.

[FR Doc. 86-6144 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 15 April 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: March 17, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-6156 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5:00 p.m. on 28 and 29 March 1986 at the Hyatt Regency Monterey; One Old Golf Course Road; Monterey, California. The purpose of the meeting is to review the development of ninth and tenth grade norms for the Department of Defense Student Testing Program and to write the Committee's biennial report. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A.R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than 21 March 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 17, 1986.

[FR Doc. 86-6155 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet on April 22-23, 1986, at the Supervisor of Shipbuilding, Conversion and Repair, Pascagoula, Mississippi. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on April 22 and commence at 8:15 a.m. and terminate at 3:30 p.m. on April 23. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide update briefings for the Committee members on research and development relative to ship construction. The agenda for the meeting will consist of briefings on naval research and development applications related to ship construction, as well as a tour of the facilities of the shipyard. These briefings and tours will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code OONR), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: March 7, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86-6100 Filed 3-19-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

National Petroleum Council U.S. Refinery Capability Task Group Meeting

Notice is hereby given that the U.S. Refinery Capability Task Group will meet in April 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The U.S. Refinery Capability Task Group will be addressing a current study of the capability of the U.S. refining industry. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Refinery Capability Task Group will hold its thirteenth meeting on Thursday, April 3, 1986, starting at 8:30 a.m., in the California Room of the Union Oil Center, 1201 West Fifth Street, Los Angeles, California.

The tentative agenda for the U.S. Refinery Capability Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review of the work of the Task Group.
3. Discussion of any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Refinery Capability Task Group 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 U.S. Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 17, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-6158 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Atlantic Richfield Co.

AGENCY: Economic Regulatory Administration, of Energy.

ACTION: Notice of cancellation of public hearing regarding proposed consent order with Atlantic Richfield Company.

SUMMARY: The Economic regulatory Administration of the Department of Energy hereby cancels the public hearing regarding the Proposed Consent Order with Atlantic Richfield Company which was scheduled for Friday, March 21, 1986, in Washington, DC (51 FR 5394, February 13, 1986). As stated in the notice, the deadline for requests to make presentations was 5:00 p.m. on March 17, 1986. Two requests to make presentations were received, but were subsequently withdrawn.

FOR FURTHER INFORMATION CONTACT: Robert Heiss, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6727.

Issued in Washington, DC on March 18, 1986.

M.C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86-6311 Filed 3-19-86; 10:16 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-18-NG]

Chieftain International, Inc.; Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 7, 1986, of an application filed by Chieftain International, Inc. (Chieftain), an affiliate of Chieftain Development Co. Ltd. (Chieftain Development), for blanket authorization to import up to 10 Bcf of natural gas annually for a two-year period beginning on the date of first delivery. The gas would be supplied by Chieftain Development or other Canadian suppliers located in the Province of Alberta and sold on a short-term or spot basis to U.S. purchasers, including gas distributors, pipelines, electric utilities, and industrial or agricultural users. Chieftain would also act as a broker or agent on behalf of U.S. purchasers and/or Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. Chieftain proposes to make quarterly reports to the ERA.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on April 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6050.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., April 21, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for

a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Chieftain's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-6038 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-17-NG]

Community Gas Acquisition, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 6, 1986, of an application filed by Community Gas Acquisition, Inc. (Community), a District of Columbia non-profit corporation, for a blanket authorization to import up to 300 Bcf of natural gas for a two-year period beginning on the date of first delivery. The gas would be supplied by various Canadian pipelines, producers, and producer groups and sold on a short-term or spot basis to U.S. purchasers, including local distribution companies, industrial and commercial end-users, and residential cooperatives. Community requests authorization to import for its own account as well as for the accounts of its foreign supplier clients and U.S. purchaser clients. The specific terms of each import and sale would be negotiated on an individual basis, including the price and volumes. Community proposes to make quarterly reports to the ERA.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on April 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW, Washington, DC, 20585, (202) 252-9590

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW, Washington, DC, 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., April 21, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Community's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, March 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-6041 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP86-15-000]

Jeems Bayou Production Corp., Martin A No. 1 Well, FERC JD No. 84-20414; Petition To Reopen and Vacate Final Well Category Determination and Request for Withdrawal of Application

Issued March 14, 1986.

Take notice that on November 20, 1985, Jeems Bayou Production Corporation filed with the Commission pursuant to § 275.205 of the Commission's regulations a petition to reopen and vacate a final well category determination under section 102 of the Natural Gas Policy Act of 1978 (NGPA) for the Martin A No. 1 well located in DeSoto Parish, Louisiana, and to withdraw its application for the determination.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20460, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6160 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-253-000]

Natural Gas Companies; Application of Kerr-McGee Corporation for Certificate of Public Convenience and Necessity for Abandonment and Pre-granted Abandonment and for Expedited Consideration

March 17, 1986.

Take notice that on March 7, 1986, Kerr-McGee Corporation (Kerr-McGee) pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717(c) and 717(f) (1982) Parts 157 and 284 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Parts 157 and 284 (1986), and § 2.77 of the Commission's Regulations, 18 CFR 2.77 (1986) applied for a Certificate of Public Convenience and Necessity (1) authorizing sales for resale of natural gas by Kerr-McGee in interstate commerce from the sources of production listed on Appendix A attached to said application; (2) authorizing the sale for resale of natural gas by Kerr-McGee attributable to other interest owners having an interest in the same production; (3) authorizing partial abandonment and pre-granted abandonment of certain sales as described herein; (4) authorizing transportation by interstate pipelines (and pre-granted abandonment of the same) where and if necessary, under section 7(c) of the NGA, 15 U.S.C. 717f(c), to effectuate the delivery of gas sold thereunder; and (5) authorizing transportation by interstate pipelines, local distribution companies, and Hinshaw pipelines as set forth in said Application. The authority is requested to be effective no later than April 1, 1986 for a two and one-half year period commencing on the date of issuance of a Commission Order approving same.

If approved, Kerr-McGee states that it will be authorized to sell gas released by Kerr-McGee's interstate pipeline purchaser (Transco) listed on Appendix A attached to said application from contractual commitment which is: (1) Subject to the maximum lawful price established by section 102(d) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3319; and (2) subject to substantially reduced takes without payment to Kerr-McGee. Kerr-McGee states that the authority will also enable it to make sales for resale in interstate commerce of the gas so released to any and all customers having the ability to purchase such gas on the open market and have gas, as well as gas which is released by Kerr-McGee's interstate pipeline customers but which is outside the Commission's NGA jurisdiction, transported to such customers.

Kerr-McGee states that the grant of authority applied for will further the policies and objectives of the Commission set forth in its Final Rule issued in *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Docket No. RM85-1-000 (Oct. 9, 1985) (Order No. 436), the Commission's decision in *Felmont Oil Corporation and Essex Offshore, Inc.*, 33 F.E.R.C. (CCH) ¶ 61,333 (1985) and in *Pennzoil Producing Co., et al.*, Docket No. CI86-54-000 (March 5, 1986).

Any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

APPENDIX A

Field/contract area	Purchaser	NGPA category
Ship Shoal Block 208/214	Transco	(102D)
Ship Shoal Block 230	Transco	(102D)
Ship Shoal Block 233	Transco	(102D)
Ship Shoal Block 239	Transco	(102D)
Galveston Block 129	Transco	(102D)

[FR Doc. 86-6161 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-1-001]

Magma Copper Co.; Petition for Temporary Exemption and Interim Relief From Incremental Pricing

Issued: March 17, 1986.

Take notice that on November 12, 1985, Magma Copper Company (Magma) filed with the Commission, pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NGPA) a petition for a one-year extension of temporary relief, commencing with the January 1986 billing period, from the incremental pricing regulations which impose a surcharge on the natural gas purchased for use in its copper mining, smelting, and refining facility located in Arizona. Magma was granted temporary relief for a one-year period, commencing with the January 1985 billing period, by order of the Director, Office of Pipeline and Producer Regulation, issued January 2, 1985. On November 29, 1985, Magma petitioned under § 381.106 of the Commission's regulations for waiver of the filing fee prescribed by § 381.401 of such regulations.

In support of its petition, Magma states that due to continued price deflation in the copper market and increased costs of production, it is suffering cash out-of-pocket losses.

Magma states that without continued exemption from the incremental pricing regulations its losses will increase. Magma requested interim relief from the incremental pricing regulations pending action on its petition for temporary exemption. Interim relief was granted by the Director on December 24, 1985.

The procedures applicable to the conduct of this proceeding are set forth in rules 1101–1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6162 Filed 3–19–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86–12–001]

Natural Gas Companies; Application for Modification of Order Permitting and Approving Limited-Term Abandonments and Granting Certificates; Mesa Petroleum Co.

March 17, 1986.

Take notice that on March 10, 1986, Mesa Operating Limited Partnership (Mesa), pursuant to section 7 of the Natural Gas Act (NGA), 15 U.S.C. 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder (18 CFR Parts 154 and 157), filed an application requesting that in Docket No. CI86–12–000 the Commission modify Paragraph (A) of its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates issued October 29, 1985 by substituting March 31, 1987 for March 31, 1986 therein, all as more fully shown in the application which is on file with the Commission and open to public inspection.

Mesa states that the circumstances that called forth Mesa's application filed on October 7, 1985 and supported issuance of the Commission's October 29, 1985 Order will continue past the March 31, 1986 termination date prescribed in Paragraph (A) of the October 29, 1985 Order to at least until March 31, 1987. If the limited-term abandonment and certificate authorization granted by the November 1, 1985 Order is extended past March 31, 1986, Mesa states that it could continue existing spot market sales and make additional sales.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before March 27, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6164 Filed 3–19–86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8716–001]

New Hope Hydro Partners; Surrender of Preliminary Permit

March 14, 1986

Take notice that the New Hope Hydro Partners, Permittee for the Union Mills Project No. 8716, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8716 was issued on July 11, 1985, and would have expired on June 30, 1987. The project would have been located on the Delaware River, in Bucks County, Pennsylvania.

The Permittee filed the request on March 10, 1986, and the preliminary permit for Project No. 8716 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6163 Filed 3–19–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–13–011]

Northwest Pipeline Corp.; Compliance Filing

March 14, 1986.

Take notice that on March 10, 1986, Northwest Pipeline Corporation (Northwest) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Original Volume No. 1–A:

First Revised Sheet No. 313
First Revised Sheet No. 314
First Revised Sheet No. 415

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 12, 1986.

On July 12, 1985, Northwest tendered for filing and acceptance Original Volume No. 1–A pursuant to Northwest's Offer of Settlement in the above-referenced docket which was approved by Commission order dated May 31, 1985. The Commission issued an order, dated February 28, 1986, approving Northwest's Original Volume No. 1–A subject to the filing of the revised tariff sheets above.

Northwest requests an effective date of May 1, 1985, for the tendered tariff sheets which is the effective date of the rates approved by the Commission order dated May 31, 1985. [*Northwest Pipeline Corp.*, 31 FERC ¶ 61,263 (1985)] and Volume No. 1–A Tariff approved February 28, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 24, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–6165 Filed 3–19–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-56-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 13, 1986.

Take notice that on March 4, 1986, Northwest Pipeline Corporation (Northwest) tendered for filing Second Revised Sheet No. 68 to be a part of its FERC Gas Tariff, Original Volume No. 2. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 10, 1986.

Rate Schedule X-24 is the San Juan Gathering Agreement (Gathering Agreement) dated January 31, 1974, as amended between Northwest and El Paso Natural Gas Company (El Paso). The Gathering Agreement is also on file with the Federal Energy Regulatory Commission (Commission) as Rate Schedule X-31 of El Paso's FERC Gas Tariff, Third Revised Volume No. 2.

Northwest and El Paso entered into a Letter Agreement (Agreement) dated December 27, 1985, providing for market responsive production control. Each party also agreed to waive (not charge or collect) the gathering charge set forth in Article IX of the Gathering Agreement. Second Revised Sheet No. 68 incorporates such agreement to waive the gathering charge.

El Paso has already tendered its companion filing, with respect to Rate Schedule X-31; therefore, Northwest requests waiver of § 154.22 in order to allow an effective date of March 31, 1986, which is the anticipated effective date of the El Paso filing, in order to maintain continuity of the respective tariffs. While Northwest believes that no further waiver of the Commission's regulations are required to make this filing effective as proposed, Northwest requests that the Commission grant any waivers it may deem necessary for the acceptance of this proposed filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 24, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6166 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-57-000]

Northwest Pipeline Corp.; Proposed Change in Gathering Rates

March 13, 1986.

Take notice that on March 7, 1986, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 2, and Original Volume No. 1-A the following tariff sheets:

Original Volume No. 2—Second Revised Sheet No. 2.2 and Tenth Revised Sheet No. 2-B

Original Volume No. 1-A—Second Revised Sheet No. 201

Northwest states that the purpose of the filing is to establish a minimum rate for gathering services applicable to all of Northwest's gathering areas and to limit the amount of gathering credit which would be received under its Rate Schedule T-5 for transportation services where a related charge is made for gathering services by Northwest. There is no change in Northwest's previously effective maximum gathering rates.

The proposed effective date of the tendered tariff sheets is May 1, 1986.

A copy of this filing has been served on all jurisdictional and affected customers and all affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6167 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-13059-000, et al.]

Sun Exploration & Production Co. et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

March 17, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 31, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-13059-000, D, Mar. 6, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Southern Natural Gas Company, Gwinville Field, Jefferson Davis County, Mississippi.	([1])	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI61-1073-000, D, Mar. 10, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Arkansas Louisiana Gas Company, Quachita Parish, Louisiana.	(2)	
CI61-1102-001, D, Mar. 6, 1986	Sun Exploration & Production Co	ANR Pipeline Company, Woodward Area Field, Woodward County, Oklahoma.	(3)	
CI62-530-000, D, Mar. 10, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Natural Gas Pipeline Company of America, North Alden Field, Caddo County, Oklahoma.	(4)	
CI64-781-000, D, Mar. 6, 1986	do	ANR Pipeline Company, Jeanerette Field, St. Mary Parish, Louisiana.	(5)	
CI67-541-000, D, Mar. 10, 1986	do	do	(2)	
CI75-769-000, D, Mar. 10, 1986	Texaco Production Inc., P.O. Box 52332, Houston, Texas 77052.	Trunkline Gas Company, South Marsh Island Block 261 Field, Offshore Louisiana.	(6)	
CI86-239-000, B, Feb. 28, 1986	Artex Oil Company, 3916 State Street, Santa Barbara, Calif. 93105.	Consolidated Gas Transmission Corporation, Gilmer County, West Virginia.	(7)	
CI86-241-000, B, Feb. 28, 1986	Francis E. Cain, Agent for Cain-Smith Gas, P.O. Box 80, Big Bend, W. Va. 26136.	Consolidated Gas Transmission Corporation, Sheridan District, Calhoun County, West Virginia.	(8)	
CI86-242-000, F, Mar. 3, 1986	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Northern Natural Gas Company, Prentice Gasoline Plant, Yoakum County, Texas.	(9)	
CI86-243-000, A, Mar. 5, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Bridgeline Gas Distribution Company, High Island Area Block A-582, Offshore Texas.	(10)	
CI86-244-000, A, Mar. 5, 1986	do	Transcontinental Gas Pipe Line Corporation, High Island Area Block A-582, Offshore Texas.	(11)	
CI86-246-000, F, Mar. 5, 1986	Texaco Inc. (Succ. in Interest to Sun Exploration & Production Co.), P.O. Box 52332, Houston, Texas 77052.	El Paso Natural Gas Company, Rhodes Yates Unit, Lea County, New Mexico.	(12)	
CI86-247-000, B, Mar. 3, 1986	ENSTAR Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Michigan Wisconsin Pipeline Company, Calcasieu Lake Field, Cameron Parish, Louisiana.	(13)	
CI86-248-000, B, Mar. 4, 1986	Houston Oil & Minerals Corporation, P.O. Box 2511, Houston, Texas 77001.	United Gas Pipe Line Company, Roanoke Field, Jefferson Davis Parish, Louisiana.	(14)	
CI86-249-000 (CI86-93-000), B, Mar. 4, 1986.	ENSTAR Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Arkansas Louisiana Gas Company, Village Field, Columbia County, Arkansas.	(15)	
CI86-250-000 (CI68-1010), B, Mar. 5, 1986.	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Northern Natural Gas Company, Tangier Field, Woodward County, Oklahoma.	(16)	
CI86-257-000 (CI70-398), B, Mar. 10, 1986.	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Texas Eastern Transmission Corporation, West Cameron Block 192 Field, Offshore Louisiana.	(17)	
CI86-258-000, B, Mar. 10, 1986	TXO Production Corp., First City Center, LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Colorado Interstate Gas Company, Hickman #1 Well, Sec. 34, Twp. 26N, Range 25W, Harper County, Oklahoma.	(18)	
CI86-259-000, B, Mar. 10, 1986	do	Transwestern Pipeline Company, Hester No. 1 Well, Sec. 24, 3N, 26ECM, Beaver County, Oklahoma.	(19)	
CI86-260-000, B, Mar. 10, 1986	do	Northern Natural Gas Company, Shafer No. 1 Well, Sec. 12, 22, 25W, Ellis County, Oklahoma.	(18)	
CI86-261-000 (G-15250), B, Mar. 10, 1986.	Shell Offshore Inc.	Tennessee Gas Pipeline Company, West Cameron Block 192 Field, Offshore Louisiana.	(17)	

[1] Property sold to Robert B. Lambert.
[2] Deletion of acreage. ARCO no longer holds an interest in acreage to be deleted.
[3] Property sold to Robert L. Ham.
[4] ARCO no longer holds an interest in subject acreage and acreage released back to the landowners.
[5] Deletion of acreage. ARCO no longer holds an interest in acreage to be deleted (released 10-8-85).
[6] Assignment of a part of TPI's interest to Huffco.
[7] This well has declined beyond its economic limit. The operating expenses exceed the income from production.
[8] Uneconomical.
[9] Assignment, Bill of Sale and conveyance to Amoco Production Company from John J. Christmann, *et al*, was effective 9-17-85.
[10] Applicant is filing under Gas Sales and Purchase Contract dated 2-7-86.
[11] Applicant is filing under Gas Purchase Agreement dated 2-18-86.
[12] By Assignment effective 10-1-84, Applicant acquired certain property from Sun Exploration & Production Co.
[13] Applicant's interest in the field was conveyed to Marsh Engineering, Inc., effective 11-7-83.
[14] Assignment and/or sale of certain dedicated leases.
[15] Effective 9-1-85, ENSTAR conveyed its interest in the properties dedicated to the contract to TXO Production Corp.
[16] All acreage has been assigned to Maynard Oil Company.
[17] By Release of Oil and Gas Lease dated 11-22-83 and 11-21-85, Applicant has released all of its interest to the United States of America, Department of the Interior, Bureau of Land Management.
[18] Depleted.
[19] Casing leak, deemed uneconomical to repair.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-6168 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES86-30-000, et al.]

Iowa Public Service Co. et al.; Electric Rate and Corporate Regulations Filings

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

1. Iowa Public Service Company

[Docket No. ES86-30-000]

March 17, 1986.

Take notice that on March 10, 1986, Iowa Public Service Company (Applicant), filed an application seeking an order pursuant to section 204 of the Federal Power Act, authorizing it to issue and sell, in one or more public offerings or private placements, prior to December 31, 1987, fixed rate debt in aggregate principal amount of not more than the $140 million and exempting the issuance from competitive bidding requirements.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas and Electric Company

[Docket No. ES86-29-000]

March 17, 1986.

Take notice that on March 7, 1986, Kansas Gas and Electric Company (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Order authorizing the issuance of up to $50,000,000 principal amount of one or more series of its first mortgage bonds.

Comment date: March 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER86-342-000]

March 14, 1986.

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on March 10, 1986, tendered for filing as an initial rate schedule, an agreement between Niagara Mohawk and the Power Authority of the State of New York (PASNY) dated July 30, 1985.

Niagara Mohawk states that this agreement establishes the rate for transmitting power and energy from PASNY to the Niagara Frontier Transportation Authority (NFTA) utilizing Niagara Mohawk's existing transmission facilities. Niagara Mohawk presently has on file an agreement with PASNY designated Rate Schedule FERC 19 for, among other services, supplying and transmitting power and energy from PASNY's Niagara Project over Niagara Mohawk's transmission facilities to PASNY's municipal and cooperative customers and certain industrial customers for Niagara Mohawk. The rate for the transmission service under the proposed initial rate schedule would be set at the rate for transmission service provided under Niagara Mohawk's Rate Schedule FERC 19.

Copies of this filing were served upon the following:

Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223

Niagara Mohawk requests waiver of the Commission's notice requirements so as to allow the proposed initial rate schedule to become effective on July 1, 1985.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER86-343-000]

March 17, 1986.

Take notice that Pacific Gas and Electric Company (PGandE) on March 10, 1986, tendered for filing as an initial rate schedule a DWR Letter Agreement for emergency transmission service by PGandE for the State of California Department of Water Resources (DWR).

The Agreementl provides for emergency transmission service over PGandE's Diablo Canyon Generation Tie Lines from September 21, 1983 to October 5, 1983, a period when regular service being rendered to DWR under the Comprehensive Agreement, as amended, (FERC Rate Schedule No. 77), was interrupted because of wind damage to transmission towers between Gates and Midway substations. The transmission rate of 1.08 mills/kWh is a negotiated rate for generation tie services. Transmission losses between the Table Mountain Substation and Midway Substation for energy transmitted using this service shall be the 1.7 percent transmission loss factor for Backbone.

PGandE has requested a waiver of the Commission's usual notice requirement so as to permit an immediate effective date of September 21, 1983. PGandE also has requested a waiver of the usual notice requirement in § 35.15 of the Commission's Regulations so as to permit termination of the rate schedule on October 5, 1983, as provided in the Letter Agreement.

Copies of the filing and proposed termination were served upon DWR and the California Public Utilities Commission.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER86-350-000]

March 14, 1986.

Take notice that on March 11, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing proposed changes to Rate Schedule FERC No. 85. These changes are to certain rates, terms and conditions concerning those services rendered by PGandE under the agreement entitled "Interconnection Agreement Between Pacific Gas and Electric Company and the City of Santa Clara" (the Interconnection Agreement) which has been filed as part of Rate Schedule FERC No. 85. These changes are embodied in two bilateral agreements:

- "Agreement For An Implementation Procedure For Certain 1984 and 1985 Rate Adjustments under the 1984-1985 Appendix A to the Interconnection Agreement between Pacific Gas and Electric Company and the City of Santa Clara" (Implementation Agreement).
- Revised Appendix A (rate appendix) to the Interconnection Agreement.

The Implementation Agreement embodies the agreement between PGandE and the City of Santa Clara (Santa Clara) on the procedure and mechanism designed to recover amounts due PGandE from Santa Clara and Santa Clara from PGandE as a result of certain California Public Utilities Commission and Federal Energy Regulatory Commission decisions, under the provisions of the Appendix A to the Interconnection Agreement presently on file with the Commission.

The proposed changes to the rates, terms and conditions in revised Appendix A for services provided by PGandE to Santa Clara extend and modify the present rate agreement between PGandE and Santa Clara and provide for an interim rate arrangement for the Diablo Canyon Nuclear Power Plant. Using 1986 billing determinants the rate change would result in an estimated revenue increase of $537,938.

Copies of this filing were served upon Santa Clara and the Public Utilities Commission of the State of California.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. South Carolina Public Service Authority

[Docket No. ES86-32-000]

March 17, 1986.

Take notice that on March 12, 1986, South Carolina Public Service Authority (Applicant) filed an application seeking an order authorizing the issuance of up to $600,000,000 in Electric System Expansion Revenue Bonds, Refunding series at one or more times. The Authority asks, in the alternative, an order dismissing the aspplication for lack of jurisdiction. The bonds are to be sold at negotiated sales with a single underwriting group for all sales.

Comment date: April 7, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. UNITIL Power Corp., Concord Electric Company, Exeter & Hampton Electric Company

[Docket No. EL86-28-000]

March 17, 1986.

Please take notice that on March 12, 1986, UNITIL Power Corp., of Bedford, New Hampshire, Concord Electric Company of Concord, New Hampshire, and Exeter & Hampton Electric Company, of Exeter, New Hampshire, filed an Petition for a Declaratory Order in the docket referred to above.

Petitioners seek a declaration by the Commission that: (1) The New England Electric Power Pool Agreement entitles Petitioners, who are members of that Pool, to receive transmission and subtransmission service from Public Service Company of New Hampshire for power from pool-planned units under the terms of that Agreement; and (2) the existing transmission tariff filed with this Commission by Public Service Company of New Hampshire entitles Petitioners to receive transmission and subtransmission service, for power from non-pool units, under the terms of that tariff. In the alternative, to the extent that such relief is not forthcoming by October 1, 1986, Petitioners request an order under section 202(c) of the Federal Power Act compelling transmission as may be required to prevent a power emergency.

The Petitioners have served Public Service Company of New Hampshire

and the Public Utility Commission of New Hampshire.

Comment date: March 28, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6159 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Colorado Interstate Gas Company, Order Granting Request for Clarification

Issued: March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On February 12, 1986, Colorado Interstate Gas Company (CIG) filed a request for clarification of the transitional provisions of Order No. 436 with respect to transportation under section 311 of the Natural Gas Policy Act.[1] Specifically, CIG requests clarification that the natural gas transportation service commenced for Mountain Industrial Gas Company (MIC) [2] on behalf of Pacific Lighting Gas Supply Company (Pacific Lighting) [3] falls within the scope of the transitional provisions of Order No. 436.

On August 30, 1985, CIG commenced transportation services for MIC on behalf of Pacific Lighting under section 311 and Part 284 of the Commission's regulations. Service was commenced pursuant to an oral agreement. CIG filed a summary report of the transaction on September 3, 1985, pursuant to the applicable reporting requirements of then existing § 284.4(b).[4] On September 30, 1985, CIG filed a request for waiver of the 30-day filing requirement for the initial full report required under § 284.106(a). CIG subsequently filed this initial report on November 4, 1985.

Section 284.105 of the regulations promulgated by Order No. 436 provides that any NGPA section 311 transportation service authorized and commenced on or before October 9, 1985, may be continued, with several exceptions, under the terms and conditions that applied prior to November 1, 1985, until the earlier of October 9, 1987, or the end of the expiration of the term of contract.

The Commission has previously clarified that the transitional provisions of § 284.105 are applicable to service which commenced pursuant to a verbal agreement prior to October 9, 1985, as long as the parties to the transaction complied with all applicable reporting requirements.[5] The Commission has further clarified that transportation service which was commenced under the self-implementing procedures of § 284.102 prior to October 9, 1985, in which the initial report was filed five days late, yet prior to October 9, 1985, qualified for transitional treatment under § 285.105.[6]

In the instant case, CIG commenced the transportation service, filed the then-required 48 hour report, and filed a request for a waiver of the 30-day filing requirement for the initial full report required under § 284.106(a), all prior to October 9, 1985. CIG subsequently filed the initial report on November 4, 1985. The Commisison finds that CIG's transportation service on behalf of Pacific Lighting was authorized and commenced under the self-implementing procedures of § 284.102 prior to October 9, 1985. The service thus qualifies under the transitional provisions of section 284.105 of the Commission's Regulations.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6129 Filed 3-19-86; 3:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Industrial Groups); Order Granting Request for Clarification

Issued: March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On November 1, 1985, the Industrial Groups [1] filed a request for two clarifications and one modification of certain of the transitional provisions of the transportation regulations issued October 9, 1985 in Order No. 436.[2] Since the filing of the request, Order No. 436-A has been issued, disposing of numerous applications for rehearing of the original order.[3] We consider the requests *seriatim* in light of both orders:

(1) The first request involves a situation where a transportation service for high-priority end uses was authorized and commenced prior to October 9, 1985, but the pipeline processed the transaction under the notice and protest procedures of §§ 157.205 and 157.209(e) of the Regulations, notwithstanding the self-implementing authorization available under § 157.209(a)(1). In several similar situations, we have held that transportation for high-priority end users was authorized automatically under § 157.209(a)(1) with the commencement of service, irrespective of the procedures actually followed, and thus qualifies for continuing transportation authorization under § 284.223(g)(1). *See Midwest Solvents Co. (Order Granting Rehearing)*, 33 FERC ¶ 61,395 (1985); *Southern Natural Gas Co.*, 33 FERC ¶ 61,444 (1985); *Battle Creek Gas Co.*, 33 FERC ¶ 61,450; and *Michigan Paperboard Co.*, 34 FERC

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[1] *See* § 284.105 and Order No. 436, 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[2] MIC, a wholly owned affiliate of CIG, was incorporated to engage in nonregulated sales of natural gas, natural gas brokering, and natural gas gathering.

[3] Pacific Lighting is a local distribution company which will use the gas for system supply requirements.

[4] Section 284.4(b) required any interstate pipeline engaging in a transaction to file a summary report with the Commission within forty-eight hours after the commencement of deliveries of natural gas. This section was amended on October 18, 1985, and subsection (b) was eliminated effective November 1, 1985, 50 FR 42408.

[5] *See* Pacific Gas & Electric Company, 33 FERC ¶ 61,155 (October 31, 1985).

[6] *See* Tex-La Gas Company, 33 FERC ¶ 61,206 (November 13, 1985).

[1] Process Gas Consumers Group, American Iron and Steel Institute, Chemical Manufacturers Association, Association of Businesses Advocating Tariff Equity, and Georgia Industrial Group.

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (October 18, 1985); Technical Corrections issued October 24, 1985.

[3] *Id.*, Order No. 436-A, 50 FR 52217 (December 23, 1985), III FERC Statutes and Regulations ¶ 30,675 (December 12, 1985).

¶ 61,046 (1986). The same conclusion is applicable here.

(2) In their second request, the Industrial Groups seek clarification that if a pipeline files a non-discriminatory access statement, it may initiate new transportation transactions under Order Nos. 319, 234–B and 60, and under section 311 of the NGPA.

First, it is important to note that the statement of intent not to discriminate was required only for continuing transportation under previous Order No. 234–B arrangements. Order Nos. 436 and 436–A provide that any pipeline could continue to provide transportation services after November 1, 1985, under a blanket certificate issued pursuant to Order No. 234–B, if the pipeline filed a non-discriminatory access statement before that date.

However, to be able to continue to provide such transportation services after December 16, 1985, § 284.223(g)(3)(i) of the Regulations requires that the pipeline file for a new blanket certificate under § 284.221 before that time. Only three pipeline companies, Mid-Louisiana Gas Company, Columbia Gulf Transmission Company and Columbia Gas Transmission Corporation, in fact made the requisite filings within the time specified and are thus authorized to continue to provide transportation for Order No. 234–B transactions under the transitional provisions. Each has since been issued a new blanket certificate.

Since December 16, 1985, several additional pipelines have applied for new blanket certificates under Subpart G of Part 284 of the Regulations. Applications by Gas Gathering Corporation and Valley Gas Transmission, Inc. have been granted at this time, while others remain pending. These applications are effective only on issuance of the certificate and do not qualify under the transition provisions.

Where a pipeline did not apply for a new blanket certificate by December 16, 1985, it must now have ceased all blanket certificate transportation under Part 157 except for any Order No. 319 transportation initially authorized under previously effective § 157.209(a)(1), as since clarified by the Commission, which may qualify to continue under new § 284.223(g)(1).

Insofar as transportation under NGPA section 311 is concerned, § 284.105 of the Regulations allows any such transactions which were authorized and commenced by October 9, 1985, to continue under the earlier of their full term or October 9, 1987. If a pipeline has undertaken new Section 311 transportation after October 9, 1985, it must continue to provide such transportation on a non-discriminatory basis. However, if the pipeline wishes to avoid the contract demand reduction/conversion conditions of § 284.10, any such section 311 transportation initiated after October 9, 1985, must terminate by July 1, 1986.[4] Additional clarification in this area is provided in Order No. 436–A at mimeo. pp. 48–49 and pp. 257–70, 50 FR 52228 and 52269–52272 (December 23, 1985).

With regard to Order No. 60 transactions, the filing of a statement of notification under § 284.223(g) did not authorize the pipeline to commence new transactions under Order No. 60. Order No. 60 promulgated § 284.221 of our former rules. Section 284.222 of our new rules provides that for a pipeline to commence new transactions of the kind previously authorized by Order No. 60, a pipeline must first apply for and receive a blanket certificate under new § 284.221.[5]

(3) The Industrial Groups request modification of Order No. 436 to permit a pipeline which failed to file a statement of its intention not to discriminate, prior to November 1, 1985, to make such filing after November 1 and thereby reactivate its previous Order No. 234–B transactions for the remainder of the period up to December 16, 1985. This request is not moot. We note that no pipeline sought to file an untimely statement of intention.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6130 Filed 3–19–86; 8:45 am]

BILLING CODE 6717-01-M

[4] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket Nos. RM85–1–000, *et al.*, Order No. 436–B, Order Granting In Part Petitions For Rehearing and Reconsideration, 34 FERC ¶ 61,204 (February 14, 1986).

[5] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Co.), 34 FERC ¶ 61,140 (1986).

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Oregon Steel Mills and Northwest Natural Gas Co; Order Dismissing Request for Clarification

Issued March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 30, 1986, Oregon Steel Mills and Northwest Natural Gas Company filed a joint request for clarification of Order No. 436–A,[1] requesting authority for their transportation arrangement with Northwest Pipeline Company to continue beyond February 15, until its expiration on March 31, 1986, without subjecting Northwest Pipeline to the conditions in § 284.10 of the Regulations after February 15, 1986. On February 14, 1986, the Commission issued Order No. 436–B,[2] authorizing new NGPA section 311 transportation arrangements to continue through June 30, 1986 without triggering the § 284.10 conditions. Accordingly, the petitioners' request for clarification is dismissed as moot.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–6131 Filed 3–19–86; 8:45 am]

BILLING CODE 6717-01-M

[1] 50 FR 52217 (December 23, 1985); FERC Statutes and Regulations ¶30,675 (issued December 12, 1985).

[2] 34 FERC ¶61,204 (issued February 14, 1986).

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Sohio Petroleum Company; Order Granting Request for Clarification

Issued March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 28, 1986, as supplemented on February 3, 1986, Sohio Petroleum Company (Sohio) filed a request for clarification of § 284.223(g)(1) of the regulations adopted in Order No. 436.[1] Specifically, Sohio requests clarification that new gas wells may be connected to a central delivery point for transportation under the transitional provisions where no modification or amendment to the transportation agreement is required.

The Commission has already clarified that where a transportation arrangement was authorized and service commenced on or before October 9, 1985, commencement of use of a particular receipt or delivery point after that date will not subject the pipeline to §§ 284.8, 284.9, and 284.10, as long as those points were specified in the agreement on or before October 9, 1985.[2]

Sohio also requests "further clarification that grandfathered transportation service is determined without regard to the effective date of a gas purchase or sales contract." That

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42208 (October 18, 1985).

[2] Order Granting Request for Clarification, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Sohio Petroleum Company and Sohio Chemical Company, *et al.*), 33 FERC ¶ 61,448 (issued December 30, 1985).

matter was fully clarified in *Hadson Gas Systems, Inc.*, 33 FERC ¶ 61,142 (October 30, 1985), *rehearing denied*, 34 FERC ¶ 61,039 (January 21, 1986), where we held that section 284.105 pertains to transportation arrangements independent of purchase agreements.

Finally, we reiterate that orders clarifying Order No. 436 apply to *all* regulated pipelines and *all* transactions covered by the regulations that are clarified.[3] We expect that transactions coming within the regulations as clarified will proceed without the need for a Commission order in each case.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6133 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Texcol Gas Services, Inc.; Order Denying Request for Clarification and Denying Waiver

Issued March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabrandt and C.M. Naeve.

On January 16, 1986, Texcol Gas Services, Inc. filed a request for clarification, or alternatively, a waiver of our Regulations such that its transportation arrangement on behalf of Holly Sugar Company would qualify under the transitional rules of Order No. 436.[1]

Texcol, an intrastate pipeline, states that on September 13, 1985, it entered into a gas purchase contract to sell gas to Holly. Texcol also entered into an oral agreement with Texcol Industrial Sales Company (TISCo) to provide transportation for TISCo and Holly. Texcol also began negotiating with Natural Gas Pipe Line Company to transport the gas on its behalf to the Texcol line. Texcol also agreed to construct and operate a five mile, 8-inch connecting pipeline to deliver the gas to Holly. Texcol states that, as of October 9, 1985, it had incurred expenses of $84,000 to prepare for deliveries.

Texcol further states that, when Order No. 436 was issued, Natural ceased negotiations with it. However, Transwestern Pipeline Company has indicated its willingness to provide the interstate transportation under section 311 of the Natural Gas Policy Act of 1978 if it is covered by the transition rules of Order No. 436. Texcol requests clarification that the arrangement is covered by the transition rules, or alternatively, citing *Judel Glassware Co., Inc., et al.*,[2] requests a waiver of the transition rules.

We deny Texcol's request for clarification and waiver. It is evident from Texcol's petition that if Natural agrees to transport the gas, the transportation agreement will be entered into after October 9, 1985. Since the transition rule in section 284.105 requires that the transportation service be authorized and commenced on or before October 9, 1985, Texcol's transaction would not qualify for transitional treatment. Our decision in *Judel* is inapplicable because the standard for grant of a waiver established therein involves construction or expenditures in reliance on an agreement prior to October 9, 1985. Since Texcol never had an agreement with Natural on or before October 9, 1985, it is clear that the construction and expenditures made by Texcol were not in reliance on such an agreement.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-6134 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas After Partial Wellhead Decontrol; Trunkline Gas Company; Order Dismissing Request for Clarification

Issued March 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 6, 1986, Trunkline Gas Company filed a petition for clarification of Order Nos. 436 and 436-A.[1] Briefly, Trunkline requests clarification of the treatment of imbalances that accrue solely as a result of authorized deliveries under § 284.10(a). Inasmuch as those issues have now been addressed in our order issued on February 18, 1986,[2] we will dismiss Trunkline's request as moot.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6132 Filed 3-19-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding to adversely affected parties $256,730.87 obtained as a result of a consent order which the DOE entered into with Martin Oil Service, Inc., a reseller-retailer of motor gasoline located in Blue Island, Illinois. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Martin consent order fund must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF-0123 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $256,730.87 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Martin Oil Service, Inc. The funds were provided to the DOE by Martin to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period March 1, 1979 through August 31, 1979. A Proposed Decision and Order tentatively

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[3] Order Granting Petition for Clarification, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (The Alpha Corporation), 34 FERC ¶ 61,184 (issued February 10, 1986).

[1] 33 FERC ¶ 61,007 50 FR 42408 (October 18, 1985).

[2] 33 FERC ¶ 61,386, 51 FR 434 (1986).

[1] 40 FR 41408 (1985) (Order No. 436). 50 FR 52217 (1985) (Order No. 436-A).

[2] 34 FERC ¶ 61,207 (1986).

establishing refund procedures and soliciting comments from the public concerning the distribution of the Martin consent order funds was issued on October 9, 1985. 50 FR 42081 (October 17, 1985).

The Decision and Order sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Martin pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals who purchased motor gasoline from Martin. OHA has decided that a two-stage refund process be followed. In the first stage, OHA has determined that a portion of the consent order funds should be distributed to 67 first purchasers who may have been overcharged. In order to obtain a refund, each claimant must either submit a schedule of its monthly purchases from Martin or submit a statement verifying that it purchased motor gasoline from Martin and is willing to rely on the data in the audit files. Certain firms must also make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers must provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

At the Decision and Order published with this Notice indicates applications for refunds may now be filed by customers who purchased motor gasoline from Martin during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: March 4, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 4, 1986.

Name of Firm: Martin Oil Service, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0123

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Martin Oil Service, Inc. (Martin).

I. Background

Martin is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR § 212.31 and is located in Blue Island, Illinois. Based on an audit of Martin's records, ERA issued a Notice of Probable Violation (NOPV) in which it alleged that Martin had committed violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The NOPV stated that between March 1, 1979 and August 31, 1979 Martin committed possible price violations with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Martin and the DOE regarding the firm's sales of motor gasoline during the period covered by the NOPV, Martin and the DOE entered into a consent order on August 31, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Martin does not admit that it violated the regulations.

The consent order required Martin to pay a total of $225,652, plus installment interest, in 24 equal monthly installments. The first payment was received on September 17, 1981 and the last on August 15, 1983.[1] This decision concerns the distribution of the funds in the escrow account.

On October 9, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable demonstration of injury as a result of Martin's alleged violations in its sales of motor gasoline during the consent order period. 50 FR 42081 (October 17, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for violations of the DOE regulations.

In order to effect restitution in this proceeding, we tentatively determined that we would rely in part on the information contained in ERA's audit file. We observed that our experience with similar cases supports the use of this approach in Subpart V cases where all or most of the purchasers of a firm's product are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶85,014 (1984) (*Marion*). We also noted that under such circumstances, a more precise determination regarding the identities of the allegedly overcharged first purchasers was possible. At the same time, we recognized that there may have been other purchasers not identified by the ERA audit who may have been injured by the consent order firm's pricing practices during the audit period who would also be entitled to a portion of the consent order funds. Therefore, procedures by which such purchasers could establish a claim were also proposed.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. Copies were also sent to various service station dealers' associations. No comments on the proposed procedures were submitted, however.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify those persons who are likely to have been injured by the alleged overcharges or to easily determine the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of motor gasoline who may have been injured by Martin's pricing practices between March 1, 1979 and August 31, 1979. If any funds remain after all meritorious

[1] The consent order fund represents 3.37 percent of the amount of the overcharge originally alleged in the NOPV. The total consent order payment including installment interest amounted to $256,730.87. We have used this figure as the principal amount. As of January 31, 1986, the escrow account contained $354,776, including accrued interest.

first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect a restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g. Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of Martin, 67 first purchasers were identified as having allegedly been overcharged. ERA also alleged overcharges to customers who were not identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE lat 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the direct customers identified by the audit, other direct customers who can show injury, and subsequent repurchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Co.*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, and the portion of the consent order fund which was allotted to each customer by ERA, are listed in the Appendices.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we will employ three rebuttable presumptions to determine the level of a purchaser's injury. These presumptions have been used in many previous special refund cases. First, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Martin motor gasoline and passed the alleged overcharges associated with that product through to their end-user members. Second, we will presume that purchasers of Martin motor gasoline who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Third, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. Lastly, we will make a finding that end-users or ultimate consumers of Martin products whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Prior OHA decisions provide detailed explanations of the bases of these presumptions and the end-user finding. *E.g., James Petroleum Corp.*, 13 DOE ¶ 85,361 at 88,894–98 (1985). The rationale for these presumptions was also fully explained in the PD&O. 50 FR 42,081 (October 17, 1985). These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

Unlike threshold-type claimants, an applicant which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. [2] In addition, a reseller claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Triton Oil & Gas Corp./Cities Service Co.*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

The demonstration of injury for retailer claimants will be different than that reseller applicants. This is appropriate because, during part of the consent order period, *i.e.*, July 16, 1979 through August 31, 1979, motor gasoline retailers established their MLSPs by adding a specified margin to product costs, rather than by reference to May 15, 1973 selling prices and increased banked costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Since for retailers the banking requirement was eliminated for this period, any blanket requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based on unrecovered "cost banks," would effectively eliminate all retailer claimants for this last part of the consent order period. Therefore, for the part of the consent order period after July 16, 1979, retailers may apply for refunds above the $5,000 threshold without demonstrating the existence of cost banks. [3] Like resellers, retailers will still be required to show that market conditions prevented them from recovering increased product costs. Such a demonstration might be based upon a demonstration of lowered profit margins, decreased market shares, or depressed sales volumes. [4]

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we will distribute a portion of the escrow funds to those firms listed in Appendices 1 and 4. [5]

[2] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[3] The cost bank requirement has been relaxed in other instances reflected the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Co./United Fuels Corp., 10 DOE ¶ 8,5005 at 88,017 n.1 (1982) (Tenneco).

[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[5] Purchasers identified in the ERA audit as having allegedly been overcharged may submit information to show that they should receive refunds larger than those indicated.

Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds, provided they make any necessary showing of injury. [6]

B. Refunds to Other Purchasers

There were also some first purchasers who were not identified by the ERA audit. These firms, and downstream purchasers, may have been injured as a result of Martin's pricing practices. If so, they would be entitled to a portion of the consent order funds provided by Martin. To help potential claimants not identified by ERA decide whether to apply for a refund, we propose to use a volumetric presumption. Under this procedure, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel purchased by the claimant.[7] The volumetric refund amount is the average per gallon refund, and in this case equals $.00044409 per gallon.[8] Potential applicants who were not identified by the ERA audit may use this figure to estimate the refunds to which they may be entitled. The volumetric presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). The presumptions and finding noted in Section A above apply also to applications submitted by claimants not identified by ERA. If valid claims exceed the funds available in the escrow account, all refunds will be reduced by a pro rata amount. Actual refunds will be determined after analyzing all appropriate claims.

[6] The share of the Martin escrow fund allocated to each firm listed in the Appendices represents 3.37 percent of the amount each was allegedly overcharged. This allocation is consistent with the terms of the consent order, which settled for 3.37 percent of the amount of the overcharge originally alleged in the NOPV.

[7] A volumetric approach is particularly appropriate in special refund proceedings in which the DOE is unable to identify readily persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what portion of the available settlement funds should be awarded to each successful claimant. It also serves as a useful approximation of injury for those claimants who are unable to quantify their injury.

[8] This figure is obtained by dividing the $39,463.90 not allotted to identified purchasers by the 88,884,227 gallons of motor gasoline sold to purchasers not identified by ERA.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Martin consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from Martin between March 1, 1979 and August 31, 1979. As we proposed, a portion of the consent order funds will be distributed to these firms listed in the Appendices 1 and 4 who file applications for refund provided they make any necessary demonstrations of injury. Martin's other eligible customers may also apply for a refund. Firms listed in Appendix 2 may receive refunds if they can rebut the spot purchaser presumption.

No valid addresses are available for those Martin customers listed in Appendix 4. In an attempt to locate these firms, we will provide Martin and various petroleum dealers' associations with copies of this Decision and will publish a notice in the **Federal Register.** We will accept information regarding the identities and present locations of these firms for a period of 90 days from the date of publication of this Decision and Order in the **Federal Register.**[9]

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of petroleum products from the applicable consent order firm. An applicant listed in Appendices 1 or 4 may instead submit a statement verifying that it purchased petroleum products from the applicable firm and is willing to rely on the data in the audit file;

(2) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issue in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. Hef-0123 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to Department of Energy by Martin Oil Service, Inc. pursuant to the consent order executed on August 31, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: March 4, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[9] If we are unable to locate any firm listed in Appendix 4, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

APPENDIX 1.—MARTIN OIL SERVICE COMPANY

First purchasers	Share of settlement [1]
Amoco Oil Company, 200 E. Randolph Drive, Chicago, IL 60601	$55,368.38
Atlantic Richfield Company, 515 South Flower Street, Los Angeles, CA 90071	49,533.66
Mr. William C. Pitcher, Koch Industries, Post Office Box 2256, Wichita, KS 67201	30,795.63
Athans Trucking, 6710 Pingree Road, Crystal Lake, Illinois 60014	15.40
Brinks, 234 E. 24th Street, Chicago, Illinois 60616	39.54
Dowell, Post Office Box 9, Henderson, CO 80640	40.31
Pioneer Steel, 9520 E. 104th Street, Henderson, Colorado 80212	17.45
U.S. Steel, North Buchanan Street, Gary, Indiana 46402	197.68

APPENDIX 1.—MARTIN OIL SERVICE COMPANY—Continued

First purchasers	Share of settlement [1]
D. Owens, 1385 Clark Road, Gary, Indiana 46404	317.57
U.D. Abbring, Highway 231, S. Halleck Street, Demotte, Indiana 46310	64.69
B. Farmer, 824 Seventh Street, Rockford, Illinois 61104	118.87
M. Perez, 3401 S. California Avenue, Chicago, Illinois 60608	129.13
E. Larkins, 10350 Woodward Street, Detroit, Michigan 48202	191.53
C. Johnson, 7915 West Flournoy, Chicago, Illinois 60624	198.97
L. Hlado, 3516 S. Ashland Avenue, Chicago, Illinois 60609	213.09
Burner, 2929 S. Cicero, Cicero, Illinois 60650	157.38
Buy-Rite, 2 North Brainard Avenue, LaGrange, Illinois 60525	757.61
Century, Post Office Box 6192, Denver, Colorado 80206	29.52
Chief Petroleum, 301 S. Tenth Street, Colorado Springs, Colorado 80904	3,231.98
Dearborn Wheels, 6425 Telegraph Road, Dearborn Heights, Michigan 48128	727.83
Drawe Oil, 22841 Koths Street, Taylor, Michigan 48180	340.17
Gas Center, 5889 Archer Avenue, Chicago, Illinois 60638	1,492.63
General Petroleum, 5450 N.W. Highway, Chicago, Illinois 60630	65.73
Gladieux Refining, 4133 New Haven Avenue, Ft. Wayne, Indiana 46803	77.27
Texor Petroleum, 3346 Harlem Avenue, Riverside, Illinois 60546	1,228.71
HS&L, 4220 Shirley Lane, Alsip, Illinois 60658	718.33
M & M Oil, 911 N. Baldwin, Marion, Indiana 46952	96.27
Minuteman Gas & Pantry, 131 Washington Street, Woodstock, Illinois 60098	2,153.20
Remote Service, Post Office Box 35580, Louisville, Kentucky 40232	537.34
Schweigert Oil, 16500 Elwell Road, Belleville, MI 48111	137.10
E.A. Shell, 6550 Old U.S. 23, Brighton, Michigan 48111	92.17
Spruce Oil, Post Office Box 5568 T.A., Denver, Colorado 80217	3,375.76
J.M. Sweeney, 5200 W. 41st Street, Chicago, Illinois 60650	134.01
Taylor Tire Service, 206 W. 14 Mile Road, Clawson, Michigan 48017	208.47
Watkins Oil, Box 195, Hillsdale, Michigan 49242	17.20
Wise Buy, 6630 W. Montrose, Harwood Heights, Illinois 60634	263.67
Carson Petroleum, 332 S. Michigan Avenue, Chicago, Illinois 60604	68.04
Jubilee Oil, 4201 N. Lincoln, Chicago, Illinois 60618	78.05
Paulson Oil Company, 836 Broadway, Chesterton, Indiana 46304	21.82

[1] This figure includes the share of installment interest. It does not include accrued interest. *See* note 1, p. 2.

APPENDIX 2.—MARTIN OIL SERVICE COMPANY

Spot purchasers	Share of settlement [1]
Conoco, Building TA 1138, Post Office Box 2197, Houston, Texas 77252	$16,858.48
Shell Oil, 1025 Connecticut Avenue NW., Washington, DC 20036	5,164.65
Total Petroleum, East Superior, Alma, Michigan 48801	23,543.51
Wood River Oil Company, Post Office Box 2302, Wichita, Kansas 67201	14,281.94
Walter Meade, 28762 Warren Avenue, Westland, Michigan 48185	7.96
Morrison Refining	4.36
Osceola Refining, Post Office Box 517, West Branch, Michigan 48661	15.14
Tiger Petroleum, Post Office Box 26, Lebanon, Illinois 62254	50.83
Vickers Oil, 6666 Stapleton S. Drive, Denver, Colorado 80216	451.34

APPENDIX 2.—MARTIN OIL SERVICE COMPANY—Continued

Spot purchasers	Share of settlement [1]
Ashland, Post Office Box 391, Ashland, Kentucky 41101	$406.66

[1] This figure includes the share of installment interest. It does not include accrued interest *See* note 1, p. 2.

APPENDIX 3.—MARTIN OIL SERVICE COMPANY

First purchasers	Share of settlement [1]
Bulkmatic, 12000 S. Doty, Chicago, Illinois 60628	$9.76
Largo Management, 4399 Larriot Way, Boulder, Colorado 80301	11.81
Village of Robbins, 3329 W. 13th Street, Robbins, Illinois 60472	7.44
Moran Fuel, 409 Cornell, Calumet City, Illinois 60401	1.54
Omni Petroleum, Post Office Box 50032, Chicago, Illinois 60650	12.58
Automatic Gas, Post Office Box 5568, Denver, Colorado 80217	.51
Gasgo, 803 W. Hill Grove Avenue, LaGrange, Illinois 60525	2.06
State Oil, 357 N. Cedar Lake Road, Round Lake, Illinois 60073	.77

[1] As stated in the Proposed Decision and Order, we do not intend to process refund claims for under $15.00.

APPENDIX 4.—MARTIN OIL SERVICE COMPANY NO ADDRESSES AVAILABLE

Purchaser's name	Share of settlement
J. Duszynski	$49.55
W. Summers	244.67
Addison	786.11
Excel Sales	1,005.35
Fitzco	631.04
Industrial Oil	96.01
Saturn Petroleum	313.47
Circle G	37.23
Elm Street Service	9.24
Keller-Heartt	5.64

[FR Doc. 86-6039 Filed 3-19-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $59,995 obtained as a result of a consent order which the DOE entered into with Petroleum Sales and Service, Inc., a reseller-retailer of petroleum products located in Buffalo, New York. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0151.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $59,995 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Petroleum Sales and Service, Inc. (PS&S). The funds were provided to the DOE by PS&S to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period April 1, 1979, through March 31, 1980

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals that purchased PS&S motor gasoline during the consent order period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of PS&S motor gasoline and to demonstrate that it was injured by PS&S's pricing practices. The specific requirements for proving injury are set forth in the following Proposed Decision and Order.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments

received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 13, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 13, 1986.

Name of Firm: Petroleum Sales and Service, Inc.

Date of Filing: October 13, 1983

Case Number: HEF-0151

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Petroleum Sales and Service, Inc. (PS&S).

I. Background

PS&S is a "reseller-retailer" of refined petroleum products, as that term was defined in 10 CFR 212.31, and is located in Buffalo, New York. A DOE audit of PS&S's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between April 1, 1979, and March 31, 1980, PS&S committed possible pricing violations amounting to $129,428 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between PS&S and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, PS&S and the DOE entered into a consent order on September 29, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that PS&S does not admit that it violated the regulations.

Under the terms of the consent order, PS&S was required, in a series of installments, to deposit $59,995, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. PS&S avoided paying any installment interest by remitting the full sum on September 30, 1981.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by PS&S's pricing practices during the period April 1, 1979, through March 31, 1980. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the PS&S refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by PS&S's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions which will be used to help determine the level of a purchaser's injury.

The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all of PS&S's sales of motor gasoline made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric method. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making proposed findings that end users, certain types of regulated firms, and cooperatives were injured by PS&S's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the volumetric method we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons of PS&S motor gasoline that it purchased during the consent order period times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.001081 per gallon.[2] In addition, successful claimants will reveive a proportionate share of the accured interest.

The second presumption we plan to use is that purchasers of PS&S motor gasoline seeking small refunds were injured by the firm's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982).

These firms were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a

[1] The total value of the PS&S escrow account stood at $91,334.84 as of February 29, 1986.

[2] This figure is computed by dividing the $59,995 received from PS&S by the 55,481,424 gallons of motor gasoline estimated to have been sold by the firm during the consent order period. The volume estimate was derived from data concerning PS&S's purchases of motor gasoline during the first six months of the consent order period. Since the firm has limited storage capacity, it is reasonable to assume that PS&S's sales of motor gasoline were roughly equal to its purchases during a given period. After making this assumption, we then extrapolated from the six month data to arrive at a sales estimate for the entire consent order period. The volumetric factor will be revised, however, if we are able to obtain more precise sales information at a later date.

specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed both the expected refund and the benefits from any additional precision. As a result, without simplified procedures injured parties could effectively be denied the opportunity to receive a refund.

Under the small-claims presumption, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes of PS&S motor gasoline purchased if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. For example, the cost to the applicant and the government of compiling and analyzing information sufficient to show injury should not exceed the amount of any relevent refund. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that as a result of market conditions, it did not pass through those increased costs.[3]

A modification of the standard injury requirement is necessary in this proceeding because for 8½ months of the 12-month PS&S consent order period, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 8½ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based on unrecovered cost banks, would effectively eliminate all non-threshold retailer claimants for a portion of the consent order period. Therefore, in this proceeding, we will allow retailers which lack banks subsequent to July 16, 1979 to file a claim for a refund which exceeds $5,000.[4] Like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, *e.g.*, through a demonstration of reduced profit margins, decreased market shares, depressed sales volumes or competitive disadvantage.[5]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from PS&S not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of PS&S motor gasoline during the consent order period.

As noted above, we have concluded that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *See also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein.[6]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the motor gasoline overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of PS&S's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of

[3] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[4] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982).

[5] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982).

[6] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principal applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule of its monthly purchases of PS&S motor gasoline as well as all relevant information necessary to support their claim in accordance with the presumptions and findings outlined above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Petroleum Sales and Service, Inc., pursuant to the consent order executed on September 29, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 86-6040 Filed 3-19-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-2988-2]

State and Local Assistance; Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment.

SUMMARY: This notice sets forth the allotments to the States of $574.2 million for the municipal wastewater treatment works construction grants program. On December 20, 1985, in Pub. L. No. 99-190, Congress appropriated and made immediately available $600 million for allotment to the States in fiscal year (FY) 1986. As part of the Administration's Balanced Budget and Emergency Deficit Control Act sequestration order for FY 1986, there has been a 4.3 percent reduction to the $600 million, resulting in a revised allotment total of $574.2 million.

Section 205(c)(2) of the Clean Water Act (the Act), as amended by Pub. L. 97-117, provides that sums appropriated through FY 1985 be allotted to the States in accordance with the table in section 205(c)(2). Although the construction grants program's authorization period ended on October 1, 1985, in Pub. L. 99-190 Congress directed that the $600 million to be made immediately available be allotted to the States according to the referenced table; and, in the conference report, Congress directed that the funds be expended subject to the statutory provisions that were in effect during FY 1985.

Through promulgation of this notice, the requirements of the Act are fulfilled and the public is notified of the amounts made available to the States for grants for the construction of municipal wastewater treatment works.

FOR FURTHER INFORMATION CONTACT: Mr. John Olsen, Chief, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382-5837.

SUPPLEMENTARY INFORMATION: Pub. L. 99-190 appropriated and made immediately available $600 million to fund the construction grants program in fiscal year (FY) 1986. Congress directed that the funds are to be allotted to the States under section 205 of the Clean Water Act (the Act). Subsequently, as part of the Balanced Budget and Emergency Deficit Control Act sequestration order for FY 1986, there has been a 4.3 percent reduction to the $600 million, resulting in a revised allotment total of $574.2 million. Congress stated in the conference report to Pub. L. 99-190, H.R. Rep. No. 450, 99th Cong., 1st Sess. 369, that it expects to make an additional $1,800,000,000 available at the earliest opportunity after enactment of the Clean Water Act amendments.

As directed by Congress, the funds to be made immediately available for FY 1986 are hereby allotted on the basis of the percentages listed in the table contained in section 205(c)(2). This table complies with section 205(e) of the Act, which requires that all States receive at least one-half of one percent of the total allotment. The percentages in the table were applied to the revised allotment total of $574.2 million to determine actual dollar amounts, which follow.

The conference report to Pub. L. 99-190 directed that funds be subject to the statutory provisions that were in effect during FY 1985. Pub. L. 99-190 contains the following passage relative to the use of these funds: ". . . funds appropriated by this section shall not be limited to phases or segments of previously funded projects."

These allotments are available for obligation until September 30, 1987. After that date, unobligated balances will be reallotted in accordance with the Act and EPA regulated 40 CFR 35.2010. Grants from the allotments may be awarded as of the date that advices of allowance are issued to the EPA Regional Administrators by the Comptroller of EPA.

Dated: March 12, 1986.

Lee M. Thomas,

Administrator.

FISCAL YEAR 1986 STATE ALLOTMENTS BASED ON THE $574.2 MILLION REVISED TOTAL

State	Share	Dollar allotment
Alabama	.011398	6,545,000
Alaska	.006101	3,503,000
Arizona	.006885	3,953,000
Arkansas	.006668	3,829,000
California	.072901	41,860,000
Colorado	.008154	4,682,000
Connecticut	.012487	7,170,000
Delaware	.004965	2,851,000
Dist. of Columbia	.004965	2,851,000
Florida	.034407	19,757,000
Georgia	.017234	9,896,000
Hawaii	.007895	4,533,000
Idaho	.004965	2,851,000
Illinois	.046101	26,471,000

FISCAL YEAR 1986 State ALLOTMENTS BASED ON THE $574.2 MILLION REVISED TOTAL—Continued

State	Share	Dollar allotment
Indiana	.024566	14,106,000
Iowa	.013796	7,922,000
Kansas	.009201	5,283,000
Kentucky	.012973	7,449,000
Louisiana	.011205	6,434,000
Maine	.007788	4,472,000
Maryland	.024653	14,156,000
Massachusetts	.034608	19,872,000
Michigan	.043829	25,167,000
Minnesota	.018735	10,758,000
Mississippi	.009184	5,273,000
Missouri	.028257	16,225,000
Montana	.004965	2,851,000
Nebraska	.005214	2,994,000
Nevada	.004965	2,851,000
New Hampshire	.010186	5,849,000
New Jersey	.041654	23,918,000
New Mexico	.004965	2,851,000
New York	.113097	64,940,000
North Carolina	.018396	10,563,000
North Dakota	.004965	2,851,000
Ohio	.057383	32,949,000
Oklahoma	.008235	4,729,000
Oregon	.011515	6,612,000
Pennsylvania	.040377	23,185,000
Rhode Island	.006750	3,876,000
South Carolina	.010442	5,996,000
South Dakota	.004965	2,851,000
Tennessee	.014807	8,502,000
Texas	.038726	22,237,000
Utah	.005371	3,084,000
Vermont	.004965	2,851,000
Virginia	.020861	11,978,000
Washington	.017726	10,178,000
West Virginia	.015890	9,124,000
Wisconsin	.027557	15,823,000
Wyoming	.004965	2,851,000
Guam	.000662	380,000
Puerto Rico	.013295	7,634,000
Virgin Islands	.000531	305,000
American Samoa	.000915	525,000
Trust Territories of Pacific Isl	.001305	749,000
Northern Mariana Islands	.000425	244,000
Total	.999996	574,200,000

[FR Doc. 86-6091 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

[OW-1-FRL-2987-3]

Water Pollution Control; Sweedens Swamp, MA; Recommended Determination To Prohibit the Specification of an Area for Use as a Disposal Site; Extension of Time

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has for good cause extended the time for making a recommendation under section 404(c) of the Clean Water Act concerning a proposal by The Pyramid Companies to fill portions of Sweedens Swamp in Attleboro, Massachusetts, for the purpose of building a shopping mall. The time for making the recommendation has been extended from October 26, 1985 to March 4, 1986.

DATE: Extension of recommendation until March 4, 1986.

FOR FURTHER INFORMATION CONTACT: Douglas Thompson, U.S. EPA, Region I, J.F. Kennedy Building, Boston, MA 02203; (617) 223-5600.

SUPPLEMENTARY INFORMATION:

I. Description of the Section 404(c) Process

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404. Section 404(c) authorizes EPA to prohibit or restrict the use of waters of the U.S. for the discharge of dredged or fill material, if the Agency determines, after opportunity for a public hearing and consultation with the Corps of Engineers ("Corps") that such use would have an unacceptable adverse effect on certain resources, including wildlife habitat.

Under EPA's implementing regulations (40 CFR Part 231), the Regional Administrator is responsible for initiating the 404(c) process, consulting with the Corps and the prospective discharger, seeking public comment, holding a public hearing if requested, and preparing a recommended decision based on a review of the record.

The Regional Administrator's recommendation is then reviewed at EPA Headquarters, and after further consultation with the Corps and the discharger, is either affirmed, modified, or reversed by the Assistant Administrator for External Affairs. While the regulations specify normal time periods for these steps, it authorizes the Administrator and the Regional Administrator to extend those time periods for good cause and to publish notice of the extension in the **Federal Register.** The regulation does not require advance publication in order for the extension to be effective.

II. Proceedings to Date and Extension of Time in Attleboro, Massachusetts Case

The Pyramid Companies ("Pyramid") proposes to fill 32 acres of forested wetland (known as Sweedens Swamp) in Attleboro, Massachusetts, in order to build a shopping mall.

The Regional Administrator of EPA initiated the instant 404(c) process on July 23, 1985, by notifying the Corps and Pyramid of his intention to issue a proposed determination to prohibit or restrict the use of Sweedens Swamp as a disposal site, based on the belief that the proposed project may have unacceptable adverse effects on wildlife habitat at the site. The proposed determination was signed by the Regional Administrator on August 13, 1985. The public notice of the proposed determination, published in the **Federal Register** on August 21, 1985, established a public comment period from August 21 through October 21, 1985 and scheduled a public hearing in Attleboro on September 26, 1985.

Pursuant to 40 CFR 231.5, the Regional Administrator initially expected to withdraw his proposed determination or forward a recommendation to EPA Headquarters by October 26, 1985. For several reasons, as discussed below, the time for completing the regional recommendation was extended until March 4, 1986. This notice is being published pursuant to 40 CFR 231.8 to inform the public of the good cause for the time extension.

One of the issues on which EPA sought public comment was Pyramid's plan to create artificial wetlands at an offsite location. Pyramid did not make its detailed plans available, however, until near the close of EPA's comment period. On October 18, 1985, the New England Division of the Corps issued a public notice soliciting comment on Pyramid's proposal. A public hearing on the plan was conducted by the Corps on November 18, 1985, and public comments were accepted until November 28, 1985. Because the Corps had sought comments on an issue that was also a subject of EPA's request for comments, the Regional Administrator determined that there was good cause to wait to incorporate the comments submitted to the Corps into EPA's 404(c) record.

Additional causes for the extension of time in preparing the recommendation were the unexpectedly high number of public comments submitted to EPA and the Corps, and the complexity of the issues posed by this case. Over 1,200 comments, totalling thousands of pages, were submitted to EPA during the comment period. Hundreds of other comments were submitted before and after the comment period. All of these were reviewed and evaluated in preparation of the recommendation, a process which took a substantial amount of time.

Also, as described in detail in the recommendation, Pyramid's proposed project and the Corps' notice of intent to issue a permit presented numerous technical, legal, and policy issues of a complexity not anticipated by the 30-day time frame provided by § 231.5. The Regional Administrator required additional time to give full consideration to these issues.

Accordingly, the Regional Administrator determined that all of these reasons constituted good cause for

extending the time for making the regional recommendation from October 26, 1985 to March 4, 1986.

The recommendation has been forwarded to EPA's Assistant Administrator for External Affairs, who is responsible for making the final decision. A copy of the recommendation may be obtained by writing to or calling the person listed above under the section captioned For Further Information Contact.

Dated: March 11, 1985.

Michael R. Deland,

Regional Administrator.

[FR Doc. 85-6092 Filed 3-19-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 17, 1986.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within ten calendar days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below:

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal To Approve Under OMB-Delegated Authority a Revision of the Following Report

1. Report title: Monthly Survey of Selected Deposits and Other Accounts.

Agency form number: FR 2042.

OMB Docket number: 7100-0066.

Frequency: Monthly.

Reporters: Commercial banks, mutual savings banks and FDIC-insured Federal savings banks.

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [U.S.C. 552(b)(4)].

These data, which are collected from a sample of commercial banks, mutual savings banks, and FDIC-insured Federal savings banks, are used by the Federal Reserve (1) to analyze and interpret movements in the monetary aggregates, (2) to observe competitive developments between banks and thrift institutions, and (3) to help monitor the earnings position of banks and thrifts.

Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-6157 Filed 3-19-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Small Grant Review Committee Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Mental Health Small Grant Review Committee. This meeting will be open for discussion of administrative announcements and program developments. The committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 section 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Mental Health Small Grant Review Committee.

Date and Time: April 18-19, 1:30 p.m.

Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.

Status of Meeting:

OPEN—April 18, 1:30-2:30 p.m.

CLOSED—Otherwise.

Contact: Barbara McCracken, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843.

Purpose: The Committee is charged with initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Summary of meeting and roster of committee members may be obtained from Ms. Helen Garrett, Committee Management Officer, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: March 14, 1986.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-6050 Filed 3-19-86; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, April 11, 1986, at the St. Jude Children's Research Hospital Auditorium, 332 North Lauderdale, Memphis, Tennessee 38105.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and discussions to obtain information regarding center programs supported by the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will furnish substantive program information.

Dated: March 11, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-6070 Filed 3-19-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Camping and Firearms Use Restriction; Merced River and Folsom Resource Areas, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Camping and Firearms Use Restriction Order on Public Lands along the Merced River of the Folsom Resource Area, Bakersfield District, CA.

SUMMARY: Persons without commercial permits may camp along the Merced River in designated campsites only, between Bryceburg and Halls Gulch. Each campsite will have a maximum occupancy of 4 adults (16 years and older). Each campsite may have no more than two motor vehicles, or combination of a motor vehicle and a recreational vehicle. Discharge of firearms is prohibited within ½ mile of the center of the river for all public lands along the Merced River. For the purpose of this order, a firearm is defined as under Title 18, U.S.C., Chapter 44, section 921(a)(3). Federal, State and local law enforcement officers are exempt from this order in the course of their official duties. This order goes into effect on March 31, 1986.

DATE: This order is in effect on March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Folsom Resource Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. Telephone: (916) 985-4474.

SUPPLEMENTARY INFORMATION: The purpose of this order is to protect resources of the public land, persons and property, and augment the Camping and Occupancy Restriction Order published in the **Federal Register**, Volume 48, No. 208, October 26, 1983, 49555. Authority for this restriction order is contained in CFR Title 43, Chapter II, Part 8364, Subparts 8364.1 and 8365.1-2(a).

Any person who fails to comply with this restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0-7.

D.K. Swickard,

Area Manager.

[FR Doc. 86-6054 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-40-M

[A-21787]

Classification of Public Lands; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The city of Mesa proposes to develop a training facility for law enforcement and firefighting personnel within the following described forty acres of public land:

G&SR Meridian, Arizona

T. 2 N., R. 6 E.,
Sec. 33, SE¼NW¼.

The land has been examined and found suitable for classification for recreation and public purposes under the provisions of the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869; 869-4) and the regulations contained in 43 CFR 2740 and 43 CFR 2912.

In addition, the lands are determined to meet general classification criteria of 43 CFR 2410.1(a)(d) and specific public purposes classification criteria of 43 CFR 2430.4(a)(c).

Classification of this land under the provisions of the above cited Recreation and Public Purposes Act segregates them on the date of publication in the **Federal Register** from all appropriations including location under the mining laws, but not from applications under the mineral leasing laws or the Recreation and Public Purposes Act.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 14, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-6066 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-32-M

Environmental Statements; California Vegetation Management; Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management with the United States Forest Service as Cooperating Agency will prepare a programmatic Environmental Impact Statement for proposed vegetation management activities on public lands in California and northwest Nevada.

Proposed vegetation management includes chemical, manual, mechanical and prescribed burning control of vegetation which interferes with the survival and growth of commercial tree species, range vegetation, and wildlife habitat; encroaches upon recreation sites, roads and rights-of-way; is considered a fire hazard; or is identified as toxic or noxious to animals or humans.

The control practices would be applied to public lands throughout California and in northwest Nevada. The amount of land being considered for vegetation control annually is 3,000 acres of chemical spraying, 25,000 acres of prescribed burning and 2,500 acres of mechanical treatments.

Chemicals being considered for use include the following: Amitrole; Asulam; Atrazine; Bromacil; 2,4-D; 2,4-DP; Dalapon; Dicamba; Diuron; Fosamine; Glyphosate; Hexazinone; Picloram; Simazine; Tebuthiuron; Triclopyr and Ureabor.

The EIS will be prepared by an interdisciplinary team which will consider the following general issues which were developed from internal issue identification efforts and from the

experiences of other Vegetation Management EIS's:

1. Air Quality
2. Soils
3. Water Resources
4. Vegetation
5. Animals
6. Cultural Resources
7. Visual Resources and Recreation
8. Wilderness and Special areas
9. Socio-Economics
10. Human Health

This programmatic EIS will assess the overall impacts of implementing a vegetation control program. Site specific impacts will be assessed by EAs on specific project proposals to be developed in the future.

Written input will be requested through public mailings and news releases. Input should be received at the address below by May 1, 1986 to be considered in the EIS.

Public meetings have not been scheduled for this scoping process. If it is determined, as a result of public response to this NOI, that public meetings are needed they will be held prior to initiation of Draft EIS preparation.

FOR FURTHER INFORMATION CONTACT: Mark Blakeslee, Vegetation Management EIS Team Leader, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, CA 95825 (916) 978-4725.

Dated: March 14, 1986.

Ed Hastey,

State Director.

[FR Doc. 86-6053 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-40-M

Lakeview District Multiple Use Advisory Council; Meeting

Notice is hereby given, in accordance with Pub. L. 92-463 that the Lakeview District Multiple Use Advisory Council will hold a meeting/tour on April 29th 1986. The council will assemble at 7:30 a.m. in the conference room of the Bureau of Land Management office located at 1000 South 9th Street, P.O. Box 151, Lakeview, Oregon 97630. The council will then depart for an all day tour at 8:00 A.M. The tour will take place in High Desert Resource Area. The tour will center on recreation use and rangeland monitoring. The BLM will also brief the council on ongoing program developments including range, wildlife, and land exchanges.

The tour is open to the public. Public wishing to attend must provide their own transportation. Anyone wishing to attend and/or make written or oral statements to the council is requested to contact the District Manager at the above address prior to April 12, 1986. Time will be allowed during lunch for public comments. Summary minutes of the meeting will be available for review and reproduction within 30 days following the tour.

Dated: March 14, 1986.

Jerry Asher,

District Manager.

[FR Doc. 86-6127 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-33-M

Roseburg District Advisory Council, Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act (as amended), the Roseburg District Advisory Council will meet May 2, 1986. The meeting will convene at 9:30 a.m. in the conference room at the Roseburg District Office, 777 N. W. Garden Valley Blvd., Roseburg, Oregon.

The agenda for the meeting will include:

1. Opening remarks and general business.
2. Introduction of new members and review of the council charter.
3. Election of Chairman and Vice-Chairman.
4. Review of district programs.
5. Briefing regarding BLM land exchange strategy.
6. Public comment period—begins about 11:00 a.m.

Interested persons may make oral statements before the Council or file written statements for the Council's consideration.

Summary minutes of the Council meeting will be maintained in the District Office and available for public inspection during regular business hours within 30 days following the meeting.

Dated: March 12, 1986.

Melvin D. Berg,

District Manager.

[FR Doc. 86-6113 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-33-M

[W-86583]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

March 12, 1986.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-86583 for lands in Niobrara County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-86583 effective June 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-6068 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-22-M

[M-66128(SD), M66129(SD), M66130(SD), M66131(SD), M-66132(SD)]

Realty Action; Sale of Public Lands; South Dakota

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area Office, Interior.

ACTION: Notice of Realty Action Modified Competitive Sale of Public Land in Stanley County, South Dakota.

SUMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to 43 CFR 2710 and under the authority of Title II, sec. 203 of the Federal Land Policy and Management Act of 1976.

Black Hills Meridian

M-66128(SD) appraised value $75.00 per acre.

T. 4N., R. 33 E.,
Sec. 24, lot 3.

Containing 29.35 acres and located approximately 15 miles southeast of Fort Pierre, South Dakota. Designated bidder is Henry Huckfeldt.

M-66129(SD) appraised value $75.00 per acre.

T. 7N., R. 29 E.,
Sec. 31, SE¼SE¼.

Containing 40 acres and located 18½ miles northwest of Fort Pierre, South Dakota. Designated bidder is J. Clinton McQuistion.

M-66130(SD) appraised value $75.00 per acre.

T. 7 N., R. 29 E.,
Sec. 32, E½NW¼.

Containing 80 acres and located 18½ miles northwest of Fort Pierre, South Dakota. Designated bidder is J. Clinton McQuistion.

M-66131(SD) appraised value $75.00 per acre.

T. 7 N., R. 29 E.,
Sec. 32, W½SW¼.

Containing 80 acres and located 18½ miles northwest of Fort Pierre, South Dakota. Designated bidder is J. Clinton McQuistion.

M-66132(SD) appraised value $75.00 per acre.

T. 7 N., R. 29 E.,
Sec. 34, NE¼NW¼.

Containing 40 acres and located 17½ miles northwest of Fort Pierre, South Dakota. Designated bidder is J. Clinton McQuistion.

All of the above parcels are isolated from other large blocks of public lands and are difficult and uneconomical to manage. The ditches and canal reservations, as well as all minerals will be reserved to the Federal government in all parcels.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Miles City District, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Information related to the sales, including planning documents and environmental assessment is available for review at the South Dakota Resource Area, 310 Roundup St., Belle Fourche, South Dakota 57717, Telephone Number (605) 892-2526.

SUPPLEMENTARY INFORMATION: The proposed action is consistent with the State, County, and BLM policies and plans and has been discussed with the Stanley County Commission on April 3, 1985.

Bids will be opened on May 21, 1986, at 9 a.m. If not sold, the land will remain available for sale on a continuing basis until a sale is completed. Any sealed bids received will be opened at 9 a.m. each succeeding first and third Wednesdays until the lands are sold or the sale is closed.

Method of Bidding: The land will be sold by sealed bid only on a modified competitive basis. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth (20%) of the amount bid.

Modified Bidding: For a period of 30 days following the date of the sale, Henry Huckfeldt and J. Clinton McQuisition, the designated bidders, will be offered the right to meet the highest qualifying bid. The designated bidder must submit a bid of at least the fair market value prior to the sale date in order to be considered under the modified bidding provisions. If he meets the highest bid, the land will be sold to him, and the other bid will be returned. His refusal to meet the highest bid or to submit any bid at all prior to the sale date shall constitute a waiver of such bidding provisions.

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value. Bids must be individually submitted for each parcel in this notice.

The sealed bid envelope must be addressed as follows:

Cahier—Sealed Bid.
Public Land Sale M- —— (SD)
P.O. Box 31434
Billings, Montana 59107-1434

Final Details: Once a high bidder is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days. Failure to submit the required amount within the alloted time will result in cancellation of the sale and the deposit will be forfeited. All bids will be either returned, accepted or rejected within 60 days of the sale date.

Dated: March 11, 1986.

Bob Teegarden,
Acting District Manager.

[FR Doc 86-6059 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-DN

[M-66124(SD), M-66125(SD), M66126(SD), M-66127(SD), M-66584(SD), M-66585(SD)]

Realty Action; Sale of Public Lands; South Dakota

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area Office, Interior.

ACTION: Notice of Realty Action Competitive Sale of Public Land in Stanley County, South Dakota.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to 43 CFR 2710 and under the authority of Title II, sec. 203 of the Federal Land Policy and Management Act of 1976.

Black Hills Meridian

M-66124(SD) appraised value $85.00 per acre.

T. 3 N., R. 30 E.,
Sec. 26, NE¼SW¼.

Containing 40 acres and located 12½ miles southwest of Fort Pierre, South Dakota.

M-66125(SD) appraised value $85.00 per acre.

T. 3 N., R. 30 E.,
Sec. 26, SE¼SW¼.

Containing 40 acres and located 12½ miles southwest of Fort Pierre, South Dakota.

M-66126(SD) appraised value $85.00 per acre.

T. 3 N., R. 30 E.,
Sec. 28, NW¼NE¼.

Containing 40 acres and located 13 miles southwest of Fort Pierre, South Dakota.

M-66127(SD) appraised value $85.00 per acre.

T. 3 N., R. 30 E.
Sec. 28, SW¼NE¼.

Containing 40 acres and located 13 miles southwest of Fort Pierre, South Dakota.

M-66584(SD) appraised value $90.00 per acre.

T. 5 N., R. 29 E.,
Sec. 1, Lot 1.

Containing 39.93 acres and located 10 miles northwest of Fort Pierre, South Dakota.

M-66585(SD) appraised value $90.00 per acre.

T. 5 N., R. 29 E.,
Sec. 1, Lot 2.

Containing 39.81 acres and located 10 miles northwest of Fort Pierre, South Dakota.

All of the parcels are isolated from other large blocks of public lands and are difficult and uneconomical to manage. The ditches and canal reservations, as well as all minerals will be reserved to the Federal government in all parcels.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Miles City District, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Information related to the sales, including planning documents and environmental assessment is available for review at the South Dakota Resource Area, 310 Roundup St., Belle Fourche, South Dakota 57717, Telephone Number (605) 892-2526.

SUPPLEMENTARY INFORMATION: The proposed action is consistent with the State, County, and BLM policies and plans and has been discussed with the Stanley County Commission on April 3, 1985.

The subject land will be offered for sale on an open competitive basis by sealed bid only. Each bid must be

accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth (20%) of the amount bid. Bids will be opened on May 21, 1986, at 9 a.m. If not sold, the land will remain available for sale on a continuing basis until a sale is completed.

Any sealed bids received will be opened at 9 a.m. each succeeding first and third Wednesday until the lands are sold or the sale is closed.

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value. Bids must be individually submitted for each parcel in this notice.

The sealed bid envelope must be addressed as follows: Cashier—Sealed Bids, Public Land Sale M-_____ (SD), P.O. Box 31434, Billings Montana 59107-1434.

If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bid. The highest qualifying sealed bid shall then be declared.

Final Details: Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price within the time period designated by the authorized officer. Failure to submit the required amount within the allotted time will result in cancellation of the sale and the deposit will be forfeited. All bids will be either returned, accepted or rejected within 60 days of the sale date.

Dated: March 11, 1986.

Bob Teegarden,

Acting District Manager.

[FR Doc. 86-6060 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-DN-M

Filing of Plats of Survey; Colorado

March 13, 1986.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 13, 1986.

The plat representing the depending resurvey of a portion of the south and east boundaries, the north boundary, a portion of the subdivisional lines, and the survey of private land tract 37, T. 43 N., R. 3 W., New Mexico Principal Meridian, Colorado.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The protraction diagrams of the following described lands approved March 6, 1986, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective April 30, 1986.

Protraction Diagram No. 43, prepared to delineate the remaining unsurveyed public lands in T. 39 N., R. 2 E., New Mexico Principal Meridian, Colorado, was approved March 6, 1986.

Protraction Diagram No. 44, prepared to delineate the remaining unsurveyed public lands in T. 36 N., R. 9 W., New Mexico Principal Meridian, Colorado, was approved March 6, 1986.

These diagrams were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-6057 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Royalty Management Advisory Committee, Production Accounting and Auditing System Onshore Conversion Working Panel; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, hereby gives notice that the Production Accounting and Auditing System (PAAS) Onshore Conversion Working Panel, established by the Royalty Management Advisory Committee, will meet in Lakewood, Colorado, at the location and on the dates indicated below.

This notice is published in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463).

The PAAS Onshore Conversion Working Panel will submit recommendations to the Advisory Committee regarding the feasibility and practicality of converting onshore Federal and/or Indian leases to PAAS as well as recommendations regarding the report and findings of the Mineral Lease Information Study. (See Supplementary Information Section below.) The Panel will also advise if there are other alternatives that should be considered.

Location and dates: The PAAS Onshore Conversion Working Panel will meet at the COMPRI Hotel, 137 Union Boulevard, Lakewood, Colorado, March 26-28, 1986.

The Panel will meet from 8 a.m. to 5 p.m. daily. If the meeting is completed in less than the three days scheduled, the Panel will adjourn upon such completion.

The public is invited to attend these meetings and make oral or witten comments. A time will be set aside by the Panel chairperson during which the public will be invited to make oral comments. Written comments should be submitted by April 25, 1986, to the address listed below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals management Service, Royalty management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231-3360, (FTS) 326-3360.

SUPPLEMENTARY INFORMATION: MMS implemented PAAS for all reporters of offshore lease production and for a select number of reporters of onshore lease production who were included in the pilot phase of the PAAS implementation. Although most of the royalties are generated by Federal oil and gas production from offshore leases, there are relatively few offshore Federal leases and wells compared to onshore Federal leases and wells. A Department of the Interior (DOI) project, the Mineral Lease Information Study, was begun in the fall of 1985 to evaluate the cost effectiveness of PAAS and to recommend whether additional onshore Federal and Indian leases should be converted to PAAS.

The PAAS Onshore Conversion Working Panel is one of six working panels established by the Royalty Management Advisory Committee. The panels are composed of both Advisory Committee members and non-Committee members, and were established to provide the Advisory Committee with analyses of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee, which will then decide what advice and recommendations to give to the DOI and

the MMS. Although the panels may meet with DOI or MMS staff members to obtain information they require in conducting their analyses, advice and recommendations of the panel will be made to the Advisory Committee and not to the DOI or the MMS.

Dated: March 14, 1986.

William D. Bettenberg,

Director, Minerals Management Service

[FR Doc. 86-6069 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than March 31, 1986. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Mr. Fred D. Allen, (202) 632-3378, IRM-PE, Room 708, SA-12, Washington, D.C. 20523.

Date Submitted: March 7, 1986.

Submitting Agency: Agency for International Development.

OMB Number:

Form Number: AID 1550-11.

Type of Submission: New.

Title: PVO Project Reporting Information on AID Supported PVO Projects.

Purpose: To provide a data base for Agency reporting and inquiry in reference to field projects being implemented by Private and Voluntary Organizations (PVOs) registered with the Agency.

Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: March 7, 1986.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 86-6055 Filed 3-19-86; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30765]

Missouri Pacific Railroad Co.; Control and Consolidation Exemption; Jefferson Southwestern Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Missouri Pacific Railroad Company (MP) from the requirements of 49 U.S.C. 11343 with respect to: (1) The acquisition by MP of sole control of The Jefferson Southwestern Railroad Company (JSW); and (2) the consolidation of MP and JSW through either merger or purchase of assets, subject to standard employee protective conditions.

DATES: This exemption is effective on April 18, 1986. Petitions to stay must be filed by March 31, 1986. Petitions for reconsideration must be filed by April 9, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30765 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commisison, Washington, DC 20423.

(2) James C. Stroo, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll free (800) 424-5403.

Decided: March 10, 1986.

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

James H. Bayne,

Secretary.

[FR Doc. 86-6086 Filed 3-19-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30788]

N.D.C. Railroad Co., a Division of Horwith Leasing Co., Inc.; Operation Exemption in Northampton, PA

N.D.C. Railroad Company, a division of Horwith Leasing Company, Inc., has filed a notice of exemption to operate Consolidated Rail Corporation's line between milepost 0.1 and approximately milepost 0.6, a distance of approximately 0.5 miles, in Northampton, PA. Any comments must be filed with the Commission and served on Jeffrey Horwith, P.O. Box 7, Route 329, Northampton, PA 18067.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 4, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-6083 Filed 3-19-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30758]

Phelps Dodge Corp.; Exemption; Continuance in Control

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements (1) of 49 U.S.C. 11343 the continuance in control by Phelps Dodge Corporation of Tucson, Cornelia and Gila Bend Railroad Company and PDMW Transportation Division, a recently authorized motor contract carrier, subject to standard employee protective conditions for rail employees, and (2) of 49 U.S.C. 11322, the holding (a) by George B. Munroe of the positions of chairman of the board of director of Phelps Dodge Corporation and director of Santa Fe Southern Pacific Corporation and Phelps Dodge Industries, Inc., and (b) by Edward L. Palmer of the positions of directors of Phelps Dodge Corporation, Union Pacific Corporation, and Union Pacific Railroad Company.

DATES: This exemption is effective on March 19, 1986. Petitions to reopen must be filed by April 9, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30758 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Richard A. Carr, 3015 Lindberg Avenue, Allentown, PA 18103.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202)-275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase

a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800)-424-5403.

Decided: March 12, 1986.

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

James H. Bayne,

Secretary.

[FR Doc. 86-6087 Filed 3-19-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30787]

Willamette Valley Railroad Co.; Merger Exemption; Willamina & Grand Ronde Railroad Co.

Willamette Valley Railroad Co. (WVRC) and Willamina & Grand Ronde Railroad Co. (W&GRR) filed a notice of exemption for W&GRR to merge into WVRC.

WVRC and W&GRR are both controlled by Mr. David P. Root and other members of the Root family. Consummation of the merger will promote corporate simplification and eliminate the expense and burden associated with maintenance of W&GRR as a separate corporate entity. Under the merger plan, W&GRR will be dissolved as a separate corporate entity, and all of its assets and liabilities will be vested in WVRC. No reduction of transportation facilities is contemplated, and no obligations of WVRC will be impaired.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption any employees affected by the merger will be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979).

Decided: March 4, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-6084 Filed 3-19-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-47)]

The Atchison, Topeka & Santa Fe Railway Co.; Abandonment in Prowers County, CO; Findings

The Commission has issued a certificate authorizing The Atchison, Topeka & Santa Fe Railway Company to abandon its 22.96-mile rail line between Wilson Junction (milepost 30.4) and Hartman (milepost 7.44) in Prowers County, CO. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86-6085 Filed 3-19-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Central; Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Brandenburg et al. (N.D. Ill.)* Civil Action No. 85 C 4864, was lodged with the United States District Court for the Northern District of Illinois. The proposed Consent Order requires that defendants, Brandenburg Demolition, Inc. and Weil Pump company: (1) Comply with all procedural and substantive standards set out in the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations for asbestos, promulgated pursuant to section 112(c) of the Clean Air Act, 42 U.S.C. of 7412(c), (2) file periodic reports certifying their compliance, and (3) pay a civil penalty for past noncompliance.

The Department of Justice will receive, for a period of thirty (30) days from the publication of this notice, comments on the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Brandenburg et al.*, D.J. reference 90-5-2-1-790.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1500 South Everett Dicksen Bldg., 219 S. Dearborn Street, Chicago, Illinois; at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-6067 Filed 3-19-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-59]

Richard English, M.D., Miami, FL; Hearing

Notice is hereby given that on November 20, 1985, the Drug Enforcement Administration, Department of Justice, issued to Richard English, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), such application having been executed on September 6, 1985.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Tuesday, April 15, 1986, in Courtroom 1406 of the U.S. Bankruptcy Court, 51 SW. First Avenue, Miami, Florida.

Dated: March 14, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-6098 Filed 3-19-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-4]

Anne L. Hendricks, M.D., Plantation, FL; Hearing

Notice is hereby given that on December 11, 1985, the Drug Enforcement Administration, Department of Justice, issued to Anne L. Hendricks, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke her DEA Certification of Registration, AH0152239, and deny any pending applicaiton for renewal of such registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Wednesday, April 16, 1986, in Courtroom 1409 of the U.S. Bankruptcy Court, 51 SW. First Avenue, Miami, Florida.

Dated: March 14, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-6099 Filed 3-19-86; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Meeting

The next meeting of the National Commission on Agricultural Trade and Export Policy will be on Friday, April 11, 1986, at 9:00 a.m. The meeting will be in The Ballroom of The Ritz Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC.

The agenda will include decisions on recommendations for use in the final report of the Commission. The meeting is open to the public.

Kenneth L. Bader,

Chairman.

[FR Doc. 86-6049 Filed 3-19-86; 8:45 am]

BILLING CODE 3410-05-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeometry (Anthropology Program); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeometry (Anthropology Program).

Date and Time: April 4, 1986; 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 543, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. John Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550; (202) 357-7804.

Purpose of meeting: To provide advice and recommendations concerning support for archaeometry.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 17, 1986.

[FR Doc. 86-6137 Filed 3-19-86; 8:45 am]

BILLING CODE 7555-01-M

Archaeometry Advisory Panel; Establishment

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the establishment of the Advisory Panel for Archaeometry is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of panel: Advisory Panel for Archaeometry.

Purpose: Primarily, to advise on the merit of proposals for research and research-related purposes submitted to NSF for financial support. The Panel also provides oversight, general advice, and policy guidance to the Anthropology Program.

M. Rebecca Winkler,

Committee Management Officer.

March 17, 1986.

[FR Doc. 86-6136 Filed 3-19-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289-OLA-2; [ASLBP No. 86-526-05-LA]

GPU Nuclear Corp., et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

GPU Nuclear Corporation, et al., Three Mile Island Nuclear Station, Unit 1, Facility Operating License No. DPR-50

This Board is being established pursuant to a notice published by the Commission on February 28, 1986 in the **Federal Register** (51 FR 7157-7159) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendment would modify the Once Through Steam Generator (OTSG) tube repair criteria for TMI-1 in accordance with the Licensees' application dated February 4, 1986.

The Board is comprised of the following administrative judges:

Sheldon J. Wolfe, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 14th day of March, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-6122 Filed 3-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352-OLA, ASLBP No. 86-522-02-LA (Check Valves); Docket No. 50-352-OLA-2, ASLBP No. 86-526-04-LA (Containment Isolation)]

Philadelphia Electric Co. (Limerick Generating Station, Unit 1); Prehearing Conference

March 14, 1986.

Before Administrative Judges: Ivan W. Smith, Chairman; Richard F. Cole; Gustave A. Linenberger, Jr.

On December 18, 1985 the Philadelphia Electric Company applied for two amendments to the Facility Operating License No. NPF-39 for the Limerick Generating Station, Unit No. 1, located in Montgomery County, Pennsylvania. The amendments provide for an extension of time within which the Licensee may perform certain tests on the primary containment isolation valves and certain reactor instrument lines excess flow check valves. These tests must be performed when the pant is shut down. The amendents would provide a one-time only extension until the scheduled maintenance and surveillance shutdown scheduled on or before May 26, 1986.

By notices in the **Federal Register** on December 26,1985 (50 F.R. 52874) and December 30, 1985 (50 F.R. 53226, 53235), the Commission announced its determination that the proposed amendments involved no significant hazards and provide an opportunity for a public hearing to persons whose interest may be affected by the amendment.

Two petitioners, Robert L. Anthony and Air and Water Pollution Patrol, by its Chairman Frank R. Romano, have petitioned for hearings and have requested leave to intervene in the proceedings.

An Atomic Safety and Licensing Board has been designated to preside over any such hearing. The Board will convene a prehearing conference on the issues raised by the petitions for leave to intervene on Thursday, March 27, 1986, beginning at 9:00 a.m. EST, at Old Customs Courtroom (Room 300), U.S. Customs House, Second and Chestnut Streets, Philadelphia, Pennsylvania.

The public is invited to attend but there will be no opportunity for public participation in the prehearing conference.

Bethesda, Maryland, March 14, 1986.

For The Atomic Safety and Licensing Board.

Ivan W. Smith,

Chairman, Administrative Law Judge.

[FR Doc. 86-6123 Filed 3-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Kansas Gas and Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42, issued to Kansas Gas and Electric Company, Kansas City Power and Light Company, and Kansas Electric Power Cooperative, Inc., (the licensees), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment would revise Technical Specifications 3/4.2.1, Figure 3.2-1, Table 2.2-1, Bases Section 3/4.2.1 and Figure B 3/4.2.1 to implement the Relaxed Axial Offset Control (RAOC) mode of operation after fuel burnup of 8000 MWD/MTU (megawatt days/metric ton of uranium) is achieved. This change was requested in the licensees' application for amendment dated January 20, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (iv) states that "a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met."

The licensee has concluded and the staff agrees, that the proposed amendment fits the guidance provided in example (iv) because it reflects a relaxation in the Axial Flux Difference Specification that had been analyzed and found to be in acordance with the related FSAR analysis. This relaxation is based upon satisfying the NRC approved methodology in Westinghouse Topical Report, WCAP-10216, which requires that the relaxation does not become applicable until the core burnup reaches 8000 MWD/MTU. Accordingly, the staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By April 21, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person who interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10

CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B.J. Youngblood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the William Allen White Library, Emporia State University, Emporia, Kansas and the Washburn University School of Law, Topeka, Kansas.

Dated at Bethesda, Maryland, this 14th day of March 1986.

For the Nuclear Regulatory Commission.

Darl Hood,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing-A, NRR.

[FR Doc. 86-6126 Filed 3-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-364]

Babcock & Wilcox Volume Reduction Services Facility, Parks Township, PA; Issuance of Environmental Assessment and Proposed Finding of No Significant Impact Amendment of Materials License No. SNM-414

The U.S. Nuclear Regulatory Commission (NRC or Commission) has issued an Environmental Assessment and a Proposed Finding of No Significant Impact in connection with a request to amend NRC Materials License No. SNM-414 which would authorize operation of a low-level radioactive waste Volume Reduction Services Facility (VRSF) at Babcock & Wilcox's plant in Parks Township, Pennsylvania.

Identification of the Proposed Action

Babcock & Wilcox has proposed to operate, as an adjunct to their nuclear service operations, a facility for the purpose of reducing the volume of low-level radioactive waste (LLW) generated by nuclear power utilities and industrial and institutional users of radioactive materials. The VRSF would serve waste generators in the northeast region of the United States, although it would be available to others as well.

Babcock & Wilcox would use a high-force compactor to reduce the volume of non-combustible LLW and a controlled

air incinerator to reduce the volume of combustible LLW, including contaminated oil and scintillation fluids. The expected throughput would be about 470,000 cubic feet per year of non-combustible waste and about 120,000 cubic feet per year of combustible waste, although for purposes of the Environmental Assessment higher throughputs were evaluated. Volume-reduced LLW, in the form of compressed waste drums and stabilized incinerator ash, would be shipped by truck to licensed disposal sites or returned to the waste generators.

Reasons for No Significant Environmental Impact

The reasons why the proposed action will not have a significant effect on the quality of the human environment are as follows:

1. Construction of the VRSF consisted primarily of remodeling of interior building structures and installation of equipment. Thus, no disruption of the environment occurred.
2. Airborne effluents from normal operation of the VRSF would result in concentrations of radionuclides in air less than one percent of the NRC annual limits at the site boundary. The radiation dose to the maximally exposed individual would be substantially less than the limits of the U.S. Environmental Protection Agency's (EPA) Clean Air Act standard, 40 CFR Part 61.
3. Non-radiological airborne effluents from normal operation of the VRSF are expected to be within the limits set by the EPA and the Pennsylvania Department of Environmental Resources.
4. There would be no liquid effluents resulting from operation of the VRSF.
5. Calculated radiation doses resulting from postulated accidents in the VRSF would not, with two possible exceptions, be cause for any protective actions under EPA's Draft Protective Action Guidance. For the exceptions, conservative calculations indicate that evacuation of individuals near the site boundary might have to be considered to minimize exposure.
6. Transportation of LLW to and from the VRSF would not significantly increase the amount of traffic or highway deterioration, nor would the risk from normal or accident conditions in transport be significantly affected.

Summary of Environmental Assessment

In accordance with 10 CFR 51.30, the Environmental Assessment of the Babcock & Wilcox Volume Reduction Services Facility identified the proposed action (as briefly described above) and included a discussion of: Need for the VRSF, alternatives to operation of the VRSF, the environmental impacts of construction and operation of the VRSF and alternatives, a list of agencies and persons consulted, and identification of sources used in preparing the assessment.

With a lack of new LLW disposal sites and an increasing volume of waste being generated by nuclear power utilities and industrial/institutional users of radioactive materials, the need for waste volume minimization and reduction has become apparent. Babcock & Wilcox recognized the need for volume reduction as a commercial venture and proposed the VRSF to help fill that need.

Since the proposed VRSF wold be at the location of an existing plant operating under an NRC license, references to the ongoing activities were used in the environmental assessment, including provisions of the NRC license and a previous NRC environmental impact appraisal. The latter was used extensively in describing the site environment and updated as the result of a site visit and information obtained from local sources.

Information about the VRSF operations, processes and facilities, including methods of waste confinement and effluent control, was obtained from reports and descriptions submitted by Babcock & Wilcox as part of the application for license amendment. This included a topical report, AECC-4-NP-A, accepted by the NRC for referencing in applications by nuclear utility licensees, describing the incinerator proposed to be used in the VRSF.

The quantities and composition of incoming LLW from nuclear power plants and industrial/institutional generators were estimated and verified with those estimated by Babcock & Wilcox. The NRC's estimates of radionuclide composition were used in subsequent determinations of quantities and composition of VRSF end-products and effluent releases. The radiological effects from normal operations including transportation were calculated independently and found to be insignificant. In addition, the non-radiological effects were evaluated, including a review of dioxin formation and destruction in incinerators. However, effluent and environmental monitoring to demonstrate the insignificance of the effects is difficult. Babcock & Wilcox had proposed a monitoring program, and the NRC will require more frequent sampling and additional monitoring for this purpose. The NRC will also require seminanual reports analyzing the correlation among incoming waste, system performance, and emissions as an aid in determining the reliance which can be placed on information contained in incoming shipment manifests and administrative limits on effluents (tritium, carbon-14 and iodine-125).

The impacts of several postulated accidents in VRSF operations and transportation were evaluated in the assessment. Other accidents were not evaluated but were bounded by those that were. The calculated impacts were somewhat higher than those determined by Babcock & Wilcox due to differences in assumptions used. However, in either case, they are conservative estimates, and the projected doses, for a frame of reference, are less than the annual limit for radiation workers.

No alternatives to operation of the VRSF were identified as being clearly superior, either in greater benefit or less impact.

Other Related Environmental Documents

Babcock & Wilcox prepared an Environmental Analysis of the VRSF which was submitted as part of their application for license amendment.

Proposed Finding of No Significant Impact

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the amendment for the operation of the Volume Reduction Services Facility at Babcock & Wilcox's Parks Township site. On the basis of this Assessment, the Commission has concluded that the determined not to prepare an Environmental Impact Statement for the proposed action and has concluded that a Proposed Finding of No Significant Impact is appropriate.

Availability of Proposed Finding of No Significant Impact and Environmental Assessment

This Proposed Finding, the Staff's Environmental Assessment and the Applicant's Environmental Analysis are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room located at the Apollo Memorial Library in Apollo, Pennsylvania.

Dated at Silver Spring, Maryland, this 14th day of March 1986

For the Nuclear Regulatory Commission.

L.C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 86-6124 Filed 3-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No STN. 50-400]

Carolina Power and Light Co. and North Carolina Eastern Municipal Power Agency; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of Construction Permit No. CPPR-158 to Carolina Power and Light Company and the North Carolina Eastern Municipal Power Agency (the Permittees), for the Shearon Harris Nuclear Power Plant, Unit 1 located in Wake County, North Carolina.

Environmental Assessment

Identification of Proposed Action: The extension would change the expiration date of the Construction Permit CPPR-158 from June 1, 1984 to June 30, 1987. The proposed extension is responsive to Carolina Power and Light Company's applications dated March 16, 1984 and January 29, 1986.

The Need for the Proposed Action: The proposed extension is needed because the completion date of Shearon Harris, Unit 1 has been postponed for the following reasons:

1. Revised Energy and Load Forecasts reflecting a slower rate of growth in customer demand than previously projected.
2. Carolina Power and Light Company's Expanded Conservation and Load Management Program.
3. Additional time to allow the permittees to complete construction ensure that commitments and regulatory requirements have been met and to allow for contingencies such as delays in construction or licensing.

Environmental Impacts of the Proposed Action: The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The probability of accidents has not been increased and post-accident radiological releases will not be greater than previously determined, nor does the proposed extension otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed extension.

With regard to potential non-radiological impacts, the proposed extension involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with this proposed extension.

Alternatives to the Proposed Action: As required by section 102(2)(E) of NEPA (42 U.S.C. 4332(2)(E)), the staff has considered possible alternatives to the proposed action. The only possible alternative to the proposed action is not to renew the construction permit. This alternative would have led to a change in status and would result in a greater impact on Carolina Power and Light Company personnel and the environment (the project is approximately 94% complete).

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for the Shearon Harris Nuclear Power Plant, Unit 1.

Agencies and Persons Consulted: The NRC staff reviewed the permittees' requests and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an envronmental impact statement for the proposed extension.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the extension dated March 16, 1984 and January 29, 1986 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Wake County Public Library, Fayetteville Street, Raleigh, North Carolina 27601.

Dated at Bethesda, Maryland, this 14th day of March, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-6125 Filed 3-19-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting

AGENCY: The Pacific Nrthwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstem Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Mainstem passage rulemaking process review
- Alternatives to summer spill
- Production planning process
- Alternative long-range mainstem pasage objectives
- Other
- Public comment

DATE: April 3, 1986. 9:00 a.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-6114 Filed 3-19-86; 8:45 am]

BILLING CODE 0000-00-M

PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[Notice 86-21]

Presidential Commission on the Space Shuttle Challenger Accident

AGENCY: Presidential Commission on the Space Shuttle Challenger Accident.

ACTION: Notice of meeting change.

SUMMARY: The scheduled meeting on March 21, 1986, of the Presidential Commission on the Space Shuttle Challenger Accident, published in the **Federal Register** March 18, 1986 (51 FR 9300), Notice No. 86-20, has been changed as follows:

Date and time: March 21, 1986, 9:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director, Presidential Commission on the Space

Shuttle Challenger Accident (202/453-1797).

Dated: March 18, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86-6308 Filed 3-19-86; 9:49 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24050; 70-7225]

Consolidated Natural Gas Co.; Proposed Sale and Acquisition of Securities of Proposed Company

March 14, 1986.

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45 and 50 thereunder.

Consolidated proposes to form a corporation, to be called CNG Trading Company ("Trading Co."). Trading Co., either alone or in conjunction with others, proposes to broker gas and participate in markets for gas and other hydrocarbons on a spot or longer term basis. It will also transport, exchange, store gas, pool sources of gas for sale and participate as a trader and marketer in spot and futures markets for gas and other hydrocarbons. It will sell to affiliated and non-affiliated utilities and their customers. Consolidated proposes to assist Trading Co., if required, by acting as surety, indemnitor and guarantor for certain of Trading Co.'s activities.

Trading Co. proposes to issue and sell the Consolidated up to 50,000 shares of its common stock, $100 par value, per share. Consolidated proposes to make open account advances of up to $15,000,000 such advances to bear interest at a rate equal to Consolidated's effective cost of short-term funds. The advances will be repaid by Trading Co. as gas is sold. In the event that Trading Co. does not repay the advances within 360 days following the date of advances, authorization is requested to convert such advances into long-term non-negotiable notes and/or common stock or any combination thereof not to exceed $15,000,000 in total. Any such long-term non-negotiable notes of Trading Co. will mature over a period of time to be determined by the officers of Consolidated, with the interest rate at substantially the same effective rate as the related long-term debt of Consolidated. If Consolidated should not issue long-term debt, the interest rate shall be predicated on the prime commercial rate of interest at the Chase Manhattan Bank, N.A., in effect at the time of initial borrowing by Trading Co.

The application-declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 7, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant-declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues for fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6150 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14991; 811-2730]

Broad Oaks Securities, Inc.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

March 14, 1986.

Notice is hereby given that Broad Oaks Securities, Inc. ("Applicant"), Eleven Greenway Plaza, Suite 1919, Houston, TX 77046, registered as an opened, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on March 4, 1986, for an order pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, Applicant is a corporation under the laws of the state of Maryland. Applicant states that its registration statement was filed on February 25, 1977, but that it never became effective. Applicant further states that it has never made a public offering, has no security holders and has retained no assets. Finally, Applicant represents that it is not a party to any litigation or adminstrative proceeding and does not intend to engage in any business activities other than those necessary to effectuate the winding up of its business and affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 8, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirely E. Hollis,

Assistant Secretary.

[FR Doc. 86-6149 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23012; File Nos. 4-281 and S7-433]

Joint Industry Plans; Approval of Amendments to the Consolidated Tape Association Plan and Consolidated Quotation Plan Relating to Concurrent Use Indemnification

The participants in the Consolidated Quotation Plan ("CQ Plan") and the Consolidated Tape Association Plan ("CTA Plan") on October 16, 1985 submitted amendments[1] to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and to the Plan governing the operation of the consolidated transaction system ("CTS").[2]

[1] These amendments were submitted pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act").

[2] The CQ Plan and subsequent amendments are contained in File No. 4-281. The Commission approved the CQ Plan in Securities Exchange Act

Continued

I. Description of the Amendments

The purpose of the amendments is to amend section XI of the CQ Plan and section XI(d) of the CTA Plan to provide indemnification to Plan participants and others from claims with respect to a participant's concurrent use of the CQS or CTS high speed line to make available market data other than as part of the consolidated dissemination of equities quotation or last sale information.

Since 1978, the CQ Plan and CTA Plan have permitted a participant to provide market data not subject to consolidated dissemination to vndors and others over the CQS or CTS high speed line. This avoids the need to maintain separate transmission facilities to vendors and others. In 1983, the Options Price Reporting Authority ("OPRA"), an options organization similar to the CTA and CQ, amended the OPRA Plan to add a provision whereby each OPRA participant indemnifies each other OPRA participant for losses resulting from dissemination of its own market data over OPRA transmission facilities. The proposed amendments to the CQ Plan and the CTA Plan add this requirements to the idemnification requirements of the CQ and CTA Plans.

II. Approval of the Amendments

The Commission solicited comment on the amendments in Securities Exchange Act Release No. 22562 (October 25, 1985), published in 50 FR 45516 (October 31, 1985). No comments were received.

The Commission believes that the proposed amendments appropriately provide for allocation of losses resulting from informaton carried over CQS and CTA to the parties responsible for that information, thereby safeguarding the financial integrity of the CTA and CQS. The Commission therefore finds that approval of the amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for protection of investors.

Therefore, it is ordered, pursuant to section 11A of the Act and Rule 11Aa3-2(c)(2) thereunder, that the amendments to the CTA and CQ Plans be, and hereby, are approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(a)(29).

Release No. 16518 (January 22, 1980). 45 FR 6528. The CTA Plan and subsequent amendments are contained in File No. S7-433. The Commission approved the 1980 Restated and Amended CTA Plan in Securities Exchange Act Release No. 16983 (July 16, 1980). 45 FR 49414.

Dated: March 13, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6152 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23007; File No. 4-208]

Joint Industry Plan; Approval of an Amendment to the Intermarket Trading System Plan Relating to Complaint Procedures for Locked Markets in ITS

The Operating Committee of the Intermarket Trading System ("ITS") in June 1985 submitted to the Commission an amendment to the "Plan for the Purpose of Creating an Intermarket Communication Linkage" ("ITS Plan")[1], pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") and Rule 11Aa3-2("Rule") thereunder.

I. Description of Amendment

The purpose of the Amendment is to clarify the complaint procedures for responding through ITS to "locked markets",[2] and to otherwise refine the ITS locked market rule. The present rule does not specify when a complaint must be filed, and recognizes a locked market complaint that is filed regardless of whether or not the locking bid or offer still exists.

The Amendment would release the market that locked the quotation from liability if the locking bid or offer is removed prior to the time that a complaint is received. The Amendment also would give the market whose quote was locked the option of requesting satisfaction by either the issuance of a commitment or the removal of the locking bid or offer. A final refinement to the Amendment states that in error situations, a locking market must respond within two minutes of the receipt of a complaint in order to avoid liability for a locked market.

II. Approval of the Amendment

The amendment was noticed for comment and given temporary summary effectiveness in Securities Exchange Act Release No. 22139 (June 12, 1985), published in the Federal Register (50 FR 25640) on June 20, 1986. No comments were received.

The Commission believes that the Amendment represents a positive enhancement to ITS that creates opportunities for more efficient and effective market operations.[3] The Commission finds that approval of the Amendment is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors.

Therefore, it is ordered, pursuant to section 11A of the Act and Rule 11Aa3-2(c)(2) thereunder, that the Amendment to the ITS Plan be, and hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(a)(29).

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6146 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[1] The ITS Plan and subsequent amendments are contained in File No. 4-208. The Commission initially approved the ITS Plan on an interim basis on April 14, 1978. Subsequently, the Commission authorized the ITS participants to act jointly in operating the ITS for a further period of indefinite duration. *See* Securities Exchange Act Release No. 19456 (January 23, 1983). 48 FR 4938.

[2] A "locked market" occurs when the published bid quotation of one market is at the same price as the published asked quotation of another market.

[3] *See* section 11A(a)(1)(B) of the Act.

[Release No. 34-22999; File No. SR-Amex-85-30]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the American Stock Exchange, Inc. ("Amex") filed with the Commission a proposed rule change to list and trade European-style 13-week Treasury bill options ("T-bill options") that would be exercisable only at the time of their expiration.[3] Amex currently trades American-style 13-week T-bill options that can be exercised at any time until their expiration date.

II. Description of Proposal

The Amex proposal would permit the trading of European-style options on 13-week T-bills. Currently, Amex trades American-style 13-week T-bill options. For the most part, the mechanics of European-style T-bill options trading will be the same as American-style T-bill options trading with similar regulatory safeguards. In addition, the

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Notice of the proposed rule change was published in Securities Exchange Act Release No. 22492 (October 2, 1985). 50 FR 41076. No comments were received on the proposal, although Amex did submit three letters regarding its filing that are discussed below. *See infra*, notes 6, 16 and 20.

contract specifications for the proposed European-style T-bill options are similar to those applicable to the American-style T-bill options currently listed on Amex. There are several significant differences, however, between Amex's proposed T-bill options contract and the existing one. First, as a European-style option, the proposed options can be exercised only on their expiration date and not, as is the case with American-style options, at any time during the term of the contract.[4] Second, because of the European-exercise feature of the proposed T-bill options, the T-bills to be delivered upon settlement of an option exercise will remain the same throughout the life of the option.[5]

The Amex proposed that the expiration cycle for European-style T-bill options will be similar to the March expiration cycle now used for American-style T-bill options. Unlike Amex's existing options, however, which always expire on the Saturday following the third Friday of an expiration month, the exact expiration date for European-style T-bill options will vary within each expiration month. Under the proposed rules, excercise settlement dates for the European-style options would be the earliest day of each March, June, September and December expiration month on which one-year T-bills have 13 weeks remaining to maturity.[6] The expiration date would be two business days prior to exercise settlement date in order to allow for the delivery of T-bills with exactly 13 weeks to maturity.[7] Under this proposed expiration plan it would be possible for an option to expire at almost any time during the months of March, June, September and December. In addition, it would be possible for an expiration to actually occur during a prior month if the exercise settlement date occurs very early in one of those months. Generally, option expiration dates will occur at twelve week intervals, with a sixteen week interval between expiration dates occurring occasionally.

Amex's proposed rules also will permit the introduction of a series of T-bill options with up to four different expiration dates at one time. Amex intends, however, to maintain only two expiration dates at one time, replacing expired series with new series having approximately 6 months to expiration at the time of listing.

Amex is also proposing to introduce strike prices with price intervals of only .20 (20 basis points) for its new European-style T-bill options. This would be a change from Amex's currently traded American-style T-bill options which have half point (50 basis points) intervals between strikes. The proposal also would permit the establishment of up to 5 exercise prices when series of options having new expirations are opened for trading. Amex has stated, however, that it intends to establish only three exercise prices when new expirations are added.

Amex's rules also propose to set position limits at 1,500 contracts on each side of the market for European-style T-bills, as opposed to the 1,000 contract limit that applies to Amex's currently traded T-bill options. In addition, Amex is not proposing any exercise limits for the European-style T-bills because they can only be exercised on its expiration date.

The last significant change between Amex's proposed European-style options T-bills market and its existing market in American-style T-bill options will concern the use of T-bill forward or futures prices, rather than T-bill spot prices, as benchmarks for determining whether the European-style T-bill options are in- or out-of-the-money. Under this aspect of Amex's proposal, the in- or out-of-the-money value of each series would be determined by reference to the prevailing market price of a forward or futures contract that has the same delivery requirements of the particular option series involved.[8] Amex has termed the particular forward or futures price relied on for these purposes as the "Treasury Bill Reference Price ("T-Bill Reference Price").[9] Amex's proposed rule provides discretion to decide which particular forward or futures market to rely on for purposes of determining the T-Bill Reference Price.[10] For the most part, however, Amex intends to designate the daily settlement prices of futures contracts traded on the

[4] The trading of European-style options on United States securities exchanges is a relatively recent development. Currently, the only two types of European-style options contracts are traded both on the Chicago Board Options Exchange, Inc. ("CBOE"). *See* File No. SR-CBOE-84-31, Securities Exchange Act Release No. 22471 (September 26, 1985), 50 FR 40636, in which the Commission approved a proposal by the CBOE to trade European-style foreign currency options and File No. SR-CBOE-85-24, Securities Exchange Act Release No. 22309 (August 9, 1985), 50 FR 32934, approving a proposal to convert the Standard and Poor's 500 stock index option from an American to a European-style option. Trading in these options commenced on October 1, 1985.

[5] This is because, under the rules of the Options Clearing Corporation ("OCC"), options exercises will be limited to the expiration date of a contract, thereby permitting all such exercises to be settled on a single exercise settlement date. Because all options of the same series will have the same exercise settlement date, and OCC rules will call for exercises to be settled by the delivery of T-bills maturing 13 weeks after the exercise settlement date, the specific maturity date of the T-bills underlying a particular options contract will be known from the time the option commences trading on Amex. *See* Securities Exchange Act Release No. 23004 (March 12, 1986), and Securities Exchange Release No. 22369 (August 28, 1985), 50 FR 36176.

[6] Each exercise settlement date would occur precisely 13 weeks before the maturity date of a one-year T-bill. Because 52-week T-bills are generally issued at 4-week intervals, there will normally be only one such date per month. If two such dates occur during the same month, Amex's rules provide that the earlier of the two dates will be selected. We also note that Amex rules provide that the party obligated to make delivery of the underlying T-bills may choose whether to make delivery on the exercise settlement date or on the following business day, but without a price adjustment for the later delivery. This is the same rule that Amex currently applies to its American-style T-bill options. Amex has submitted a letter to the Commission to clarify that the alternative delivery date is intended to deal with situations where the Federal Reserve Bank wire transfer system becomes overloaded and therefore a timely transfer order is not completed on the settlement date. OCC rules deal with this situation in a slightly different manner. In the event of Federal Reserve wire failure or failure of access to the Federal Reserve wire by the clearing member's correspondent bank, OCC Rule 1411 permits settlement to be made on the next business day such wire is operable. Because Amex rules state that all exercise settlements must be in accordance with OCC rules, the Commission does not believe this difference in language should give rise to interpretive problems; the OCC rules would override any possible broader reading of Amex rules. *See* letter from Nathan Most, Vice President, New Products Development, Amex, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated October 22, 1985.

[7] Because T-bills generally mature on Thursdays, Amex intends to establish Thursdays as exercise settlement dates so that T-bills with exactly 13 weeks to maturity will be delivered upon exercise. Amex states that these dates were selected to coincide with the delivery dates specified for 13-week T-bill futures contracts traded on the Chicago Mercantile Exchange ("CME"). Amex's proposed rules establishing expiration dates two business days before the exercise settlement date would result in options expiring on Tuesdays. In this regard, we note that the Commission today is also approving a related proposed rule change submitted by the OCC that would allow European-style T-bill options to expire on Tuesdays, 2 days prior to the Thursday expiration settlement dates, rather than on the Saturday prior to the exercise settlement date (which is the rule applicable to expirations of T-bill options currently trading on Amex). *See* Securities Exchange Act Release No. 23004 (March 12, 1986).

[8] In this regard, we note that the futures contract would have to have delivery dates that coincide with the T-bill options exercise settlement date and would require delivery of 1,000,000 principal amount of T-bills having 13 weeks to maturity.

[9] The designated T-Bill Reference Price for a particular option series will be used to (1) determine the exercise prices at which new series of options will be opened for trading and (2) determine the applicable minimum margin requirements (because margin requirements are adjusted by out-of-the-money positions being held).

[10] In addition, under the proposed rule Amex would have authority to use forward or futures contracts with somewhat different delivery specifications than those of Amex's T-bill options to extrapolate the correct T-Bill Reference Price.

CME as the T-Bill Reference Price for its corresponding options.[11]

III. Discussion

The Amex proposal to establish a market in European-style T-bill options does not, for the most part, raise novel questions. The Commission previously has approved trading options on T-bills in approving Amex's existing market in American-style T-bill options. In this regard, we note that Amex's existing and proposed T-bill option contracts both require, upon exercise, the delivery of T-bills having 13 weeks remaining to maturity at the time of delivery. Amex's proposed T-bill options market, however, differs in one significant respect from its existing market: the proposed T-bill options only can be exercised at the time of expiration ("European-style options") rather than any time prior to the expiration date ("American-style options") as in the case with Amex's current T-bill options markets.

In reviewing this aspect of Amex's proposal, the Commission notes that, in recently approving CBOE proposals to convert the S&P 500 index option to a European-style option and to establish a European-style foreign currency options market,[12] the Commission recognized that there are advantages and disadvantages to each type of option with purchasers generally benefiting from the American-style options and sellers from European-style options.[13] For European options, the purchaser must rely on the continued existence of a secondary market in the options to be able to close out an option position before expiration. On the other hand, European-style options provide benefits to options writers, because the writers know the options they have written cannot be exercised until expiration. This can facilitate long-range planning and may prove particularly useful for investors in the T-bill options market.

Accordingly, although the European-style T-bill options proposed by Amex may limit the flexibility of options purchasers, the European-style exercise feature may facilitate certain trading strategies. The Commission, however, continues to believe that appropriate disclosure of such options and the unique risks associated with the use of options with this type of exercise restriction is necessary. In this connection, the Commission notes that the Amex in conjunction with the OCC has made the appropriate risk disclosures pertaining to the trading of European-style options in a recently revised options disclosure document ("ODD").[14]

With respect to matters of contract design and delivery specifications, so long as the Commission has no regulatory concerns, it is not inclined to substitute its judgment for the business judgment of the self-regulatory organization. Rather, in matters such as these, the marketplace generally should be permitted to determine whether a particular contract meets the needs of market participants.[15]

After carefully reviewing the contract specifications, the Commission believes that the proposed rules should be approved. As noted above, Amex has decided to trade T-bill options similar to those it currently trades, except for the European exercise feature of the contract. The Commission does not believe this aspect of Amex's proposal presents any particular regulatory or surveillance concerns and finds the contract terms, including premium bids and offers, minimum price fluctuations, expiration cycles and option exercise procedures, are appropriate.

The Commission, however, does maintain a regulatory interest in certain other terms of the proposed European-style T-bill options market. The Amex has proposed position limits that are designed to prohibit market participants from acquiring a position in European-style T-bill options in excess of 1,500 contracts on the same side of the market. Amex's rules currently provide for a position limit of 1,000 contracts for its American-style T-bill options. In reviewing position limits the Commission has been careful to balance regulatory concerns with the need not to restrict depth and liquidity in the options markets. Moreover, in establishing position limits for T-bill options, the Commission has looked to the deliverable supply of underlying 13-week T-bills that are available upon exercise. At the time of approval of Amex's original T-bill options the deliverable supply of 13-week T-bills available upon exercise, including 26 week and 52 week T-bills with 13 weeks remaining to maturity, was approximately $10–12 billion. Since then the deliverable supply of 13 week T-bills, taking into account 26 and 52 week T-bills with 13 weeks remaining to maturity that will be available upon exercise, has increased to approximately $18–20 billion. Based on the approximate doubling in the deliverable suppy of T-bills available upon exercise, the Commission believes that the 500 contract increase (or 50% increase) proposed for Amex's European-style T-bill options are appropriate. The Commission believes that the proposed position limit will be sufficient to protect the options and related markets from disruptions caused either by congestion or manipulation.[16]

As noted above, the Amex has not proposed any exercise limits for its European-style T-bills because they only can be exercised on one day at expiration. The Commission believes that the elimination of exercise limits for European-style T-bill options does not present any distinct regulatory problems or congestion concerns. This is because an investor only can hold positions up to 1,500 contracts on either side of the market, which, in effect, will limit exercises to 1,500 contracts on the one day at expiration that such European-style options can be exercised. We note, however, that Amex can grant exemptions to existing position limits under certain circumstances. In granting exemptions for higher limits in European-style T-bill options, the Commission expects Amex to take into account the total effect of such increased limits, including their effect on the number of contracts that can be exercised on expiration day and any resulting congestion concerns.

As previously discussed, expiration dates will vary within the designated expiration months of March, June, September and December because they are tied to the maturity dates of one year T-bills being auctioned every four weeks. This system is different from the expiration schedule used for existing options traded on Amex which always

[11] As noted above, the expiration settlement dates for Amex's European-style T-bill options will coincide with the delivery dates specified for Treasury bill futures contracts traded on the CME. In the event Amex cannot use the futures prices on the CME, it has indicated it intends to poll government securities dealers to obtain forward prices on which to base the T-Bill Reference Price. *See* note 22, *infra*.

[12] *See* note 4, *supra*.

[13] The Commission also noted that as long as adequate disclosure is made of the terms and conditions of these contracts, it would expect that the premiums of each kind of contract generally should reflect these differences in benefits for purchasers and writers.

[14] *See* Securities Exchange Act Release No. 22418 (September 17, 1985), 50 FR 38732.

[15] *See* Securities Exchange Act Release No. 18371 (December 23, 1981), 46 FR 65423, approving Amex's proposed rules for the trading of American-style T-bill options, including its rules pertaining to contract design and delivery specifications.

[16] Although Amex has been phasing out its American-style T-bill options, any outstanding positions in such options will be aggregated with positions in European-style T-bills for position limit purposes. *See* letter from Nathan Most, Amex, to Sharon Lawson, Attorney, Division of Market Regulation, dated December 16, 1985 ("December 1985 Letter").

expire on the Saturday following the third Friday of an expiration month. In order to avoid confusion and alert market participants trading European-style T-bill options when expirations will occur, Amex regularly will publish the expiration dates of such T-bill options in its market bulletins prior to expiration.[17] This should provide market participants with adequate notice and alert them to the fact that expiration dates for European-style T-bills are non-standard. Based on these representations, the Commission believes that this aspect of the proposal should be approved.

Amex has proposed strike price intervals of .20 for European-style T-bill options, rather than the .50 intervals currently applicable to American-style T-bills. Amex states that this change is based on its experience with its existing options, not any specific differences between European- and American-style T-bill options.

The Commission recognizes that any narrowing of strike price intervals increases the flexibility accorded market participants and allows options positions to be more finely tailored to achieve intended investment objectives by providing additional investment opportunities.[18] At the same time, however, the narrower strike price intervals create the possibility of dispersing trading interest to the degree that there is an excessive dilution of liquidity in open options series. Accordingly, an evaluation of the appropriate strike price intervals requires a balancing of the need to accommodate market participants and the need to avoid causing excessive proliferation of options series.

With respect to the Amex's proposals, the Commission has concluded that the benefits to be derived from narrower intervals, in offering participants greater flexibility in achieving investment objectives, outweighs the possible adverse effects on market liquidity and dispersion of interest that may result from that action. While the Commission recognizes that, if the market in European-style T-bill options are excessively thin, the proliferation of illiquid series can result, the Commission expects the Amex to monitor closely the situation to determine if too many illiquid open option series exist in European-style T-bills as a result of the .20 strike price intervals and to act promptly to remedy this situation should it occur.[19]

A related portion of Amex's proposal would permit up to five different exercise prices to be introduced when series of options having a new expiration date are opened for trading, with additional exercise prices being added as the underlying price changes. Under the proposed rules, however, Amex may not introduce any new option series having less than 10 days left to expiration. Amex has stated that it generally intends to establish only three exercise prices for each new expiration introduced. Nevertheless, the Amex rules would provide it with the authority to introduce up to five exercise prices at one time because it takes, operationally, at least 24 hours to have a new series posted and in periods of high volatility the lack of such authority could result in the absence of at-the-money series for a period of time.

The Commission believes that this aspect of Amex's proposal strikes an appropriate balance by simultaniously accommodating market participants without causing excessive proliferation of options series. First, we note that Amex's proposal sets the maximum permissible number of strike prices.[20] Amex intends, as a routine matter, to introduce only three different exercise prices for newly introduced expiration dates.[21] Second, Amex rules provide for the delisting of option series with no open interest; thus should Amex list a new series in anticipation of a large market movement that does not materialize, Amex would be able to delist series that attract no trading interest. Finally, we also note that although under the rules Amex will have the authority to list up to 4 expirations at one time, it intends to keep only 2 expiration dates open at a time. This policy should help to avoid a large number of illiquid series from proliferating because new series having the same expiration dates would be added over time to reflect price changes in the underlying T-bills.

As discussed above, the Amex is proposing to use the Treasury Bill Reference Price to determine the in- or out-of-the-money value of a particular series of options. Under Amex's rules, the T-Bill Reference Price is established based on the prevailing market price of a forward or futures contract with similar delivery periods as Amex's European-style T-bill options. Although the Commission understands that, except under unusual circumstances or market conditions,[22] Amex will rely on the CME's futures market to determine its T-Bill Reference Prices,[23] the proposed rules provide Amex with discretion to decide which particular forward or futures markets it will rely on.

Finally, we note the proposed expiration settlement dates for European-style T-bills were selected because they are the delivery dates specified in the CME's rules with respect to its 13 week T-bill futures contract.[24] In the corresponding options, the proposed rules provide Amex with discretion to determine which particular forward or futures markets it will use as a reference market in establishing settlement dates. The Commission's order originally approving the trading of T-bill options noted the possibility of market congestion being caused by simultaneous delivery settlement dates for options and futures on T-bills.[25]

[17] *See* December 1985 Letter, note 16, *supra*.

[18] *See* Securities Exchange Act Release No. 17238 (October 22, 1980), 45 FR 71453. *See also* Securities Exchange Act Release No. 21644 (January 9, 1985), 50 FR 2360, approving reduced strike intervals for Amex's index options.

[19] Amex will take steps to either increase strike price intervals or skip intervals in the event volatility in the underlying T-bills results in the proliferation of illiquid options series.

[20] Under the proposal, Amex would be limited to maintaining two out-of-the-money, two in-the-money and one at-the-money T-bill options contracts at any one time. *See* letter from Heidi Litt Spitzer, Senior Attorney, Amex, to Sharon Lawson, SEC, dated February 4, 1986.

[21] Although Amex would have the authority to introduce and maintain up to five strike prices it is generally understood that three strikes, one out-of-the-money, one-in-the-money and one at-the-money, will be maintained during normal market conditions with two additional strikes added only at times of high volatility or other unusual market conditions. This should provide Amex with the flexibility to respond to market changes and develop its new product. The Commission expects Amex to submit a proposed rule change if it decides it wants to maintain five strikes at all times under any market conditions.

[22] For example, in its filing Amex notes that if a daily limit is reached on the CME early in the trading day, it might poll government securities dealers to obtain forward prices that would be the basis for determining the T-Bill Reference Price for that day.

[23] If the Amex did intend to rely on another market to generate its T-Bill Reference Price on a permanent basis it would have to submit a proposed rule change to the Commission.

[24] In its filing, Amex states that because the futures contract has the same delivery specifications as Amex's proposed options contract, the selection of option exercise settlement dates that coincide with CME's futures delivery dates should result in a relatively straightforward mathematical relationship between the options traded on the Amex and the futures contracts traded on the CME.

[25] Under Rule 1405(b), the OCC has the authority to extend or postpone any exercise settlement date for T-bill options whenever it is necessary in the public interest or in unusual conditions. This authority permits the OCC to select dates for the expiration of options contracts that do not coincide with the week that the CME's futures contracts are scheduled to terminate if congestion concerns are raised by the simultaneous settlements. Amex has indicated that, to date, the OCC has never had to exercise this authority even though delivery dates in the futures and options have coincided.

Accordingly, the Commission must assess whether there is a sufficient deliverable supply of T-bill options to avert the possibility of market congestion.

As indicated earlier, the deliverable supply of 13-week T-bills, including 26 and 52 week T-bills with 13 weeks remaining to maturity that can be supplied upon exercise, has nearly doubled since the original proposal to trade T-bill options was approved by the Commission. In addition, Amex has indicated that, in its experience, only a small percentage of actual exercises occur in T-bill options. Based on the above information, the Commission believes that congestion should not occur even though options and futures that expire at the same time. We also note that if congestion problems occur, the OCC will be able to take remedial action, and has the authority to impose restrictions on exercises and, if necessary, to prescribe cash settlement in lieu of the underlying security.[26]

In general, secondary trading in European-style T-bill options contracts will be governed by the same or comparable floor and upstairs rules and will be subject to the same regulatory controls as the T-bill options currently traded on Amex. For example, all existing customer protection rules would apply to European-style T-bill options. In addition, Amex will use the same surveillance techniques that it has used for American-style T-bill options to detect manipulation and other improper trading activities. The Commission has examined carefully the proposed rules governing trading activities in European-style T-bill options on the floor of the Amex and has concluded that the proposed rules provide sufficient regulatory safeguards and investor protections to accommodate the Amex's start-up of a European-style T-bill options market.

IV. Conclusion

Under section 19(b)(2) of the Act, the Commission must approve the foregoing rule change if it determines that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission has reviewed carefully the rules proposed by the Amex to accommodate the listing and trading of European-style 13 week T-bill options and has concluded that the rules provide for adequate and proper regulation of the proposed market. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6151 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[26] The possibility that the deliverable supply to satisfy options exercises would be constricted by simultaneous Treasury bill futures delivery obligations has existed since Amex commenced trading Treasury bill options. This concern, however, has been brought into even sharper focus by the increased overlap in delivery terms effected by the changes to develop a European-style options contract. Hence, the Commission staff has requested that the Amex commence discussions with the CME on the possibility of developing coordinated surveillance information sharing arrangements, particularly in the event that either exchange anticipates possible substantial exercises or deliveries of Treasury bill options or futures contracts. *See* letter from Brandon Becker, Assistant Director, Division of Market Regulation, to Nathan Most, Vice President, Amex, dated March 4, 1986.

[Release No. 34-23008; File No. SR-CSE-86-2]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to the Application of ITS Trade-Through and Block Policy Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1986, The Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the Proposed Rule Change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed Rule Change amends CSE Rules 14.9 and 14.10 so as to extend the coverage of the Exchange's trade-through and block policies to additional trading situations involving CSE members. The terms "Exchange trade-through" and "block trade" are redefined, and conforming changes are made to the subparagraphs within Rules 14.9 and 14.10 related to remedies and exemptions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Stautory Basis for, the Proposed Rule Change

The purpose of the Proposed Rule Change is to apply the Intermarket Trading System ("ITS") trade-through and block policy rules: (1) To Designated Dealers when they effect transactions otherwise than on an exchange in ITS securities for which they are assigned as Designated Dealers; and (2) to Users when they effect transactions on the Exchange in ITS securities for which the Exchange does not have a Designated Dealer.

The Application of the ITS trade-through and block policy rules in the manner described above is consistent with Section 6(a)(5) of the Act in that it will promote just and equitable principles of trade and contribute to the perfection of the national market system, which, in turn, will protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that Rules 14.9 and 14.10, as amended by the Proposed Rule Change, will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has received comments on the Proposed Rule Change from the New York Stock Exchange, Inc.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longe period to be appropriate and publishes it reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements such respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [April 10, 1986].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6147 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23022; File No. SR-NASD-86-4]

Self-Regulatory Organizations; Request for Approval by National Association of Securities Dealers, Inc. of a Pilot Program With the Stock Exchange, London, England, for the Exchange and Distribution of International Securities Information

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 14, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been perpared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") is requesting approval from the Securities and Exchange Commission ("SEC") of a Pilot Program to be jointly undertaken by the NASD and The Stock Exchange, London, England ("Exchange"). The terms of substance of the proposed Pilot Program are set forth below.

Scope of the Pilot Program

The Pilot Program has been undertaken to enable the NASD and Exchange to formally exchange and thereafter utilize proprietary quotation and last sale information for dissemination to participants in their respective marketplaces through the existing NASDAQ System, operated by the NASD, and the TOPIC System, operated by the Exchange. Initially, the information to be utilized by each party shall be limited to the quotation information described below. By virtue of the nature of the Pilot Program, it is anticipated that both the extent and use of the information and access to the facilities operated by the other party may be expanded during the course of the Pilot Program upon further written agreement of the NASD and Exchange. An important function of the Pilot Program will be to explore the possibility of appropriate trading linkages between the NASDAQ market and the Exchange market and the necessity for and development of regulatory programs and procedures to be applied to such linkages. An additional area for consideration under the Pilot Program may be the exploration of appropriate international clearance and settlement procedures for any proposed linkage.

Description of Information

Exchange Securities Information. The Exchange will furnish to the NASD, and the NASD shall be permitted to display on each of its NASDAQ Level ⅔ authorized terminals, current price quotations in each category of Exchange securities as described below:

1. Financial Times/Stock Exchange 100 ("FTSE")

The 100 most highly capitalized companies in the U.K. domestic market. Initially only jobbers middle prices shall be disseminated through the Exchange Price Information Computer ("EPIC"), with all individual market maker quotations becoming available on or about October 27, 1986.

2. Financial Times/Stock Exchange 100 Index

The Financial Times/Stock Exchange 100 Index is calculated in one minute intervals based upon a capitalization weighted measure of the value of the individual securities included in the Index.

3. Non U.K. Domiciled Securities

All individual market maker quotations in non U.K. domiciled securities diseminated through the TOPIC International Service.

For those Exchange securities comprising the FTSE-100 Index, "price quotation" shall be understood to initially mean middle prices with inside bid and offer quotation information and last sale information being added on or about October 27, 1986 ("Big Bang Day") and two-sided individual market maker's quotation thereafter added when generally available. For the Exchange securities of non-UK-domiciled companies, "price quotations" shall be understood to mean two-sided, individual market makers' quotations. The quotation information received from the Exchange and displayed by the NASD shall include all available quotations in each applicable Exchange security and be displayed in a non-discriminatory format mutually agreeable to the Exchange and NASD.

NASDAQ Securities Information. The NASD will furnish the Exchange, and the Exchange shall be permitted to display on each of its TOPIC authorized terminals and TOPICLINE, current bid and ask quotations of all market makers in each category of NASDAQ securities described below:

1. NASDAQ-100 List

All individual market maker quotations displayed in the NASDAQ system on securities included in the NASDAQ-100 Index™, which represents 100 of the largest non-financial companies, both domestic and foreign, in the NASDAQ/NMS.

2. NASDAQ-100 Index™

The NASDAQ-100 Index™ is a capitalization weighted measure of the value of the individual securities included in the Index.

3. NASDAQ Financial 100 List

All individual market maker quotations displayed in the NASDAQ system on securities included in the NASDAQ Financial Index™, which represents the 100 largest domestic financial companies in the NASDAQ/NMS.

4. Non U.K. American Depository Receipts (ADR's)

All individual market maker quotations in ADR's underlying non-U.K. domiciled securities.

The quotation information received from the NASD and displayed by the Exchange shall include all available quotations in each applicable NASDAQ

security and be displayed in a non-discriminatory format mutually agreeable to the NASD and Exchange.

During the course of the Pilot Program, the NASD and Exchange categories of securities described above may be modified to incorporate changes, additions, and deletions of the constituent securities, and/or expanded to include additional NASDAQ or Exchange quotation and/or last sale information upon written authorization of the other, to the extent such expansion would be consistent with the technical and operational capability of the NASD and Exchange systems.

The NASD is currently considering development of an International Subset of NASDAQ data, which would incorporate approximately 500 issues. At the same time, the Exchange's International Service is expanding as market makers increasingly participate. As a result of these developments, the NASD and the Exchange may agree to expand the set of securities for which information is exchanged, up to approximately 500 from each side.

Provision of Information. The Exchange will furnish Exchange Information to the NASD during the Exchange's normal hours of operation, currently 3:30 A.M. to 12:00 P.M. Washington Time (8:30 A.M. to 5:00 P.M. London Time). The Exchange Information furnished to the NASD shall be denominated in the currency of convention for the particular security.

The NASD will furnish NASD Information to the Exchange during the NASD's normal hours of operation which are currently 8:30 A.M. to 4:00 P.M. Washington Time (1:30 P.M. to 9:00 P.M. London Time). NASD Information furnished to the Exchange shall be denominated in United States dollars.

The quotation exchange system to be operated jointly by the NASD and the Exchange will enable the display, over the other's network, of "live" prices for the subset of international securities described above from the NASDAQ and Exchange databases. Current prices for Exchange securities will be sent via direct feed to NASDAQ, from which the particular securities in the exchange set will be filtered and saved in a database for formatting consistent with the NASDAQ level 2/3 display. Current NASDAQ prices will likewise be sent via the NQDS feed to the Exchange, which will be similarly filtered and saved for display in the TOPIC videotex system and TOPICLINE. A transatlantic satellite link currently operated by the Exchange for delivery of its TOPIC service to its subsidiary in North America will be used to transmit the price information both ways between the U.S. and the U.K. A private line from the NASDAQ computers to the Exchange subsidiary's vendor-agent in New York, in whose premises the transatlantic link terminates, will be used to carry the NQDS and Exchange feeds simultaneously via multiplexing.

The delivery of Exchange data over the NASDAQ network will be via database inquiry from Level 2/3 terminals which serve primarily broker/dealer and institutional subscribers. Exchange data will not be disseminated over any NASDAQ broadcast service. Inquiry facilities will be provided which will allow access to a list of the names and symbols of Exchange securities, the middle prices for the FTSE 100 Share Index components (until "Big Bang Day"), the competing market makers' quotations for the international issues, and a directory of Exhange market maker symbols and their telephone numbers. In the various displays that include prices, the amount displayed will be denominated in the currency in which the individual security trades: pounds or pence sterling for the U.K. issues, or the currency of convention for the international issues. The currency will be identified on the screen using an appropriate identifier, e.g. USD for United States dollars, £ for pounds sterling, NLG for Netherlands (Dutch) guilders. If a particular Exchange listed security also appears in the NASDAQ database (either in stock certificate or ADR form), the NASDAQ security symbol will be displayed, but not any price data. In no case will NASDAQ and Exchange data be consolidated on a single screen display. Individual market makers' quotes will be alphabetically arranged, and no inside price will be calculated.

NASD data will be displayed in the Exchange's system on the TOPIC network of videotex terminals and TOPICLINE. The display will include price and size plus any necessary indication of a special bid condition (penalty, stabilizing, presyndicate). Market makers' quotations will be alphabetically arranged. Although each screen can display up to 32 market makers with expansion planned to 48, provision is being made for overflow pages. In the case of overflow, the number of market makers displayed on each screen will be balanced. On the first screen pertaining to a security additional data, consisting of last sale information and the inside price with the ID's of the three market makers at each side of the inside market, will also be displayed. The inside market will be computed by the Exchange using the NASDAQ standard formula, i.e., oldest highest bid, oldest lowest offer.

Usage and Fees. The Exchange is authorized to disseminate NASD information through its TOPIC network of videotex terminals and TOPICLINE. NASD Information shall be provided to the Exchange for display over its network(s) under the same terms and conditions utilized by the Exchange to protect the integrity and proprietary nature of its own data.

The NASD will be authorized to disseminate Exchange information solely through its network of Level ⅔ interactive terminals. Exchange information shall be provided to NASD for display over its network of level ⅔ terminals under the same terms and conditions utilized by the NASD to protect the intergrity and proprietary nature of its own information.

The cost of transfer of information between the parties over the transatlantic satellite link will be shared equally. The exchange of comparable information between the parties and their right to disseminate this information to subscribers through comparable networks under this Pilot Program was believed to obviate the need for any separate fee arrangement between the parties or between a party and the subscribers of the other party. However, nothing shall preclude future modification to this fee arrangement, upon written agreement of the parties, in the event additional information, services or costs arising under the Pilot Program would make such modification appropriate.

The term of the Pilot Program is for a period of two years, but may be extended for additional periods with the mutual consent of the NASD and the Exchange.

Cooperative Regulatory Undertakings. The Pilot Program to be implemented provides for the exchange of certain quotation information which is currently made available by the NASD and Exchange to its NASDAQ Level ⅔ and TOPIC subscribers respectively. The exchange of information provided for under the Pilot Program is believed to represent a definitive step toward greater cooperation between the Exchange and NASD in the evolving international securities markets. The Exchange and NASD for several years have experienced significant cooperation and coordination in the areas of information disclosure, quotation and trading halts and/or suspensions and the resumption of trading, and the surveillance and investigation of trading in securities of mutual market concern. With the

initiation of the Pilot Program, the NASD and the Exchange contemplate the continued prioritization of coordination with, and communication of relevant information to the other with respect to quotation and trading halts and/or suspensions and the resumption of trading in each market. Similarly, it is contemplated that the parties will cooperate in sharing regulatory information as needed by either the Exchange or NASD for purposes of their surveillance and investigation responsibilities with respect to the securities included within the Pilot Program.

In furtherance of these cooperative regulatory efforts, the NASD and the Exchange comtemplate the exploration of joint regulatory initiatives which may include the development of uniform standards applicable to international transactions in NASD or Exchange securities and appropriate procedures to assure compliance with such standards by the respective members of the NASD and Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposal and disscussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the Pilot Program is twofold. The Pilot Program will provide market participants in both the United States and the United Kingdom and Republic of Ireland with real time access to an expanded universe of international securities information. The Pilot Program will also serve as the foundation for evaluation of the technical ramifications and regulatory implications of international securities transactions, information dissemination and clearance and settlement in the evolving international marketplace.

The statutory basis for undertaking the Pilot Program is found in section 11A(a)(1)(B) and (C), 15A(b)(6), and 17(A)(1)(B) and (C) of the Securities Exchange Act of 1934 ("Act"). Section 11A(a)(1)(B) and (C) sets forth the Congressional goal of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulatory, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market . . ." Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience to enhance the potential for achievement of these goals in the international marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed Pilot Program will provide for the sharing of market data between the NASD and Exchange on a nonexclusive basis, and the NASD believes that it imposes no burden on competition and may in fact significantly improve the competitive dynamics of the marketplace for these securities. To the extent that any burden on competition may be found to exist, the NASD believes that the benefit to be derived from the cooperative regulatory undertakings contemplated and operational experience to be gained will outweigh any potential burden upon competition and materially advance the purposes to be served under the foregoing sections of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received in connection with the proposed Pilot Program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 14, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6154 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23014; File No. SR-OCC-86-04]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On February 21, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under Section 19(b)(1) of the Securities and Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The Commission is publishing this Notice to solicit comment on the rule change.

The proposed rule change amends the OCC By-law Article XV(k)'s definition of "country of origin" and adds related Interpretations and Policies to OCC Rule 1607. The By-Law's definition of

"country of origin" for ECU options exercise and assignment settlement purposes has been changed to refer to its meaning in OCC's Rules.[1] New Interpretation and Policy 1.a. to OCC Rule 1607 specifically defines that term for these purposes as Belgium, unless OCC directs otherwise. New Interpretation and Policy 1.b, however, states that OCC can deliver ECUs to a Clearing Member through the Member's ECU-denominated account at its correspondent bank, even if that bank is located outside Belgium.[2] Previously, exercises and assignments of ECU options could be settled only in Belgium.[3]

OCC states that the proposal should enable Clearing Members to establish banking relationships necessary to participate in the ECU options markets. OCC represents that Clearing Members have had difficulty finding banks to process ECU exercise and assignment activity because few Belgium banks offer ECU-denominated accounts. Conversely, many European banks outside Belgium offer those accounts and thus can process this activity.

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by March 31, 1986.

For the Commisison, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 13, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-6148 Filed 3-19-86; 8:45 am]

BILLING CODE 8010-01-M

[1] The ECU is the monetary unit of the European Monetary System representing a weighted average of the currencies of specified members of the European Economic Community. *See* Securities Exchange Act Release No. 22854 (February 3, 1986), 51 FR 5128 (February 11, 1986).

[2] Clearing Members still can settle ECU option exercise and assignment obligations through multi-currency accounts under OCC Rule 1607. *See* Securities Exchange Act Release No. 21359 (September 27, 1984), 49 FR 39138 (October 3, 1984) amending OCC Rule 1607 to permit foreign currencies to be delivered through multi-currency accounts maintained at banks outside the country of origin.

[3] The proposal does not change OCC's requirement that Clearing Members' ECU deliveries to OCC occur only through OCC's correspondent bank in Belgium

DEPARTMENT OF STATE

[CM-8/953]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Containers and Cargoes, Bulk Cargoes Panel; Meeting

The Bulk Cargoes Panel of the Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on Mary 1, 1986 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting is to discuss:

1. United States positions on matters to be discussed at the 27th Session of the International Maritime Organization (IMO) Subcommittee on Containers and Cargoes to be held May 12-16, 1986.

2. Proposed revision of SOLAS, Chapter VI to include basic regulations for the safe carriage of cargoes except liquids and gases in bulk and to reference the following standards:

—Code of Safe Practice for Solid Bulk Cargoes;
—Code of Safe Practice for the Safe Stowage and Securing of Cargo, Cargo Units and Vehicles (under development);
—Code of Safe Practice for Ships Carrying Timber Deck Cargoes;
—IMO/ILO Guidelines for the Packing of Cargo in Freight Containers and Vehicles; and
—Code for the Safe Carriage of Grain in Bulk.

3. Proposed amendments to the Code of Safe Practice for Solid Bulk Cargoes, including:

—Development of new criteria in respect of liquefaction and sliding failures in solid bulk cargoes;
—Stability criteria for ships carrying cargoes which may liquefy; and
—Requirements for materials possessing chemical hazards.

4. Carriage of packaged timber deck cargoes.

5. IMO activities of a continuing nature.

In addition, the National Cargo Bureau will give a brief presentation on the shipment of problematic bulk cargoes.

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant Commander Larry H. Gibson, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593. Telephone: (202) 426-1577.

Dated: March 7, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-6071 Filed 3-19-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/954]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Bulk Chemicals; Meeting

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on April 10, 1986 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting will be a general review of all agenda items for the sixteenth session of the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals scheduled for April 28-May 2, 1986.

The agenda for this meeting includes the following items:

—Implication of MARPOL 73/78, Annex II
—Mixtures of MARPOL 73/78, Annex I and Annex II substances
—Guidelines on the carriage of bulk chemicals on offshore support vessels
—Venting requirements for chemical tankers

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mr. Frits Wybenga, U.S. Coast Guard Headquarters (G-MTH-1/12), 2100 Second Street SW., Washington, DC 20593, Tel: (202) 426-1217.

Dated: March 12, 1986.

William H. Dameron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86-6072 Filed 3-19-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB February 20, 1986 to March 12, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period February 20, 1986—March 12, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from February 20, 1986—March 12, 1986.

DOT No: 2701
OMB No: 2137-0510
By: Research and Special Programs Administration
Title: RAM Transportation Requirements
Form(s): None
Frequency: On occasion
Respondents: Shippers and carriers of radioactive materials
Need/Use: To maintain transportation safety in the shipping of radioactive materials so as to avoid the radioactive exposure hazards inherent in the transportation of these materials.

DOT No: 2708
OMB No: New
By: United States Coast Guard
Title: Liquified Natural Gas (LNG) Waterfront Facilities
Form(s): None
Frequency: On occasion
Respondents: Owners/operators of LNG facilities
Need/Use: This information collection requirement is needed and used to prevent or mitigate the results of an accidental release of liquified natural gas at such waterfront facility. This requirement would reduce the possibility that such an accident could occur, and will reduce the damage and injury to persons and property in the event of an accident.

DOT No: 2709
OMB No: 2125-0526
By: Federal Highway Administration
Title: Motor Carrier Accident Reports
Form(s): MC8-50T, MCS-50B
Frequency: On occasion
Respondents: Motor carriers
Need/Use: Accident reports provide vital information to the FHWA/BMCS in administering its regulatory program

DOT No: 2710
OMB No: 2125-0516
By: Federal Highway Administration
Title: Immediate Notification of Fatal Accidents
Form(s): None
Frequency: On occasion
Respondents: Motor Carriers
Need/Use: To meet the requirement that motor carriers notify FHWA by telephone, deaths of persons that occur within 24 hours of a reportable accident.

DOT No: 2712
OMB No: 2125-0518
By: Federal Highway Administration
Title: Minimum Levels of Financial Responsibility for Motor Carriers of Passengers
Form(s): MCS-90B, MCS-82B
Frequency: Annually
Respondents: Insurance Companies
Need/Use: The law requires for-hire motor carriers of passengers to maintain minimum levels of financial responsibility. The endorsement amends the carriers policy of insurance to assure compliance by the insured.

DOT No: 2713
OMB No: New
By: United States Coast Guard
Title: 33 CFR 140.15 Equivalents and Approved Equipment
Form(s): None
Frequency: On occasion
Respondents: Industries desiring to operate on U.S. Outer Continental Shelf (OSC)
Need/Use: This requirement is needed and used by the Coast Guard to ensure that an equivalent level of safety is maintained for certain unspecified equipment or procedures as provided in the regulations.

DOT No: 2714
OMB No: 2115-0007
By: United States Coast Guard
Title: Application for Inspection of U.S. Vessel
Form(s): CG-3752
Frequency: Annually, biennially, triennially
Respondents: Owners and operators of commercial vessels.
Need/Use: The Application for Inspection (CG-3752), must be completed prior to the Coast Guard inspecting a vessel for certification. The requirements are contained in 46 CFR 2.01-1. The application provides the Coast Guard with notification and basic information needed for planning and carrying out an inspection.

DOT No: 2115
OMB No: 2137-0009
By: Research and Special Programs Administration

Title: Applications to Add or Change Materials in the IM Table
Form(s): None
Frequency: On occasion
Respondents: Businesses wishing to have the IM Portable Tank Table Modified
Need/Use: The Office of hazardous Materials Transportation uses the information as a basis for modification of the Intermodal Tank Table of Hazardous materials and the regulated public as a means to request modification of the table.

DOT No: 2716
OMB No: New
By: Office of Commercial Space Transportation, OST
Title: Commercial Space Transportation: Licensing Regulations
Form(s): None
Frequency: When submitting a license application
Respondents: Organizations applying for licenses for launches
Need/Use: Launch licenses are required to protect the public health and safety, national security and foreign policy interests of the U.S.

DOT No: 2717
OMB No: 2138-0023
By: Research and Special Programs Administration
Title: Part 291 Domestic Cargo Transportation
Form(s): RSPA—291-A
Frequency: Annual
Respondents: 40
Need/Use: The data from 291-A is used to monitor the domestic all-cargo industry. This is the only recurring statistical and financial reporting requirement on this segment of the airline industry.

DOT No: 2718
OMB No: 2138-0014
By: Research and Special Programs Administration
Title: Accessibility and Transmittal of Service-Segment Data
Form(s): None
Frequency: Monthly
Respondents: Large Certificated Route Air Carriers
Need/Use: Provides the Department with traffic and capacity data needed for determining traffic flows and adequacy of service.

DOT No: 2720
OMB No: 2127-0040
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 551.45 Designation of Agent
Form(s): None
Frequency: On occasion
Respondents: Foreign businesses
Need/Use: Every foreign manufacturer offering a motor vehicle/equipment for importation in the United States must designate an agent upon whom service of processes, notices, orders and requirements may be made.

DOT No: 2721
OMB No: 2125-0515
By: Federal Highway Administration
Title: Submission of Eligibility Statement for Utility Adjustments
Form(s): None
Frequency: On occasion
Respondents: State Highway Agencies
Need/Use: The eligibility statement is necessary in order for FHWA to determine whether the States statutes establish the legal authority or obligation to pay for utility adjustments on Federal-aid highway projects.

DOT No: 2722
OMB No: 2120-0518
By: Federal Aviation Administration
Title: Special Federal Aviation Regulation-Special Flight Authorizations for Noise Restricted Aircraft
Form(s): None
Frequency: On occasion
Respondents: Businesses and small businesses
Need/Use: Under Part 91, beginning January 1, 1985, operations of large turboject aircraft are prohibited at U.S. airports unless compliance with Part 36 noise levels is demonstrated. Therefore, operators (foreign, domestic, and corporate) will need a Special Flight Authorization for U.S. operators to dispose of aircraft or take them to be modified to comply.

DOT No: 2723
OMB No: 2127-0505
By: National Highway Traffic Safety Administration
Title: 49 CFR 571.217, Bus Window Retention and Release
Form(s): None
Frequency: On occasion
Respondents: Businesses
Need/Use: This standard requires emergency exit identification to be marked in all buses, along with concise operating instructions explaining how to unlatch and open the exit.

Issued in Washington, DC, on March 14, 1986.

John E. Turner,
Director of Information Systems and Telecommunications.

[FR Doc. 86-6135 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in February 1986. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
3302-X	DOT-E 3302	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.302, 175.3	To authorize use of non-DOT specification sampling bottles (cylinders), for transportation of certain nonflammable gases (modes 1, 2, 3, 4).
3302-X	DOT-E 3302	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302, 175.3	To authorize (modes use of non-DOT specification sampling bottles (cylinders), for transportation of certain nonflammable gases (modes 1, 2, 3, 4)
3996-X	DOT-E 3996	Stauffer Chemical Company, Westport, CT.	49 CFR 173.188	To authorize shipment of phosphoric anhydride in DOT Specification 6K metal drums (modes 1, 2).
4850-X	DOT-E 4850	GOEX, Inc., Cleburne, TX.	49 CFR 173.100(cc), 175.3.	To authorize shipment of flexible linear shaped charges, metal clad, in 100' lengths, containing not more than 50 grains per lineal foot of high explosive, as a Class C explosive (modes 1, 2, 4).
5643-X	DOT-E 5643	Union Carbide Corporation, Danbury, CT.	49 CFR 172.101, 173.315(a)(1).	To authorize shipment of 2 nonflammable gas in vacuum insulated non-DOT specification portable tanks (modes 1, 3).
6016-X	DOT-E 6016	Strate Welding Supply Co., Inc., Buffalo, NY.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
6016-X	DOT-E 6016	Acety-Arc, Inc., Paducah, KY	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6015-X	DOT-E 6016	Langdon Oxygen Co., Texarkana, TX.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6016-X	DOT-E 6016	O.E. Meyer & Sons, Inc., Sandusky, OH.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6016-X	DOT-E 6016	Southern Welding Supply Co., Inc., Bowling Green, KY.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6016-X	DOT-E 6016	Wilson Welding Supply, Inc., Warren, MI.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks (mode 1).
6045-P	DOT-E 6045	Viskase Corporation, Chicago, IL.	49 CFR 173.121	To become a party to Exemption 6045 (modes 1, 3).
6325-X	DOT-E 6325	Atlas Powder Company, Dallas, TX.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks (mode 1).
6325-X	DOT-E 6325	Mining Services International Corp., Salt Lake City, UT.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks (mode 1).
6530-X	DOT-E 6530	Acme Welding Supply Co., Inc., Bismarck, ND.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX steel cylinders (modes 1, 2).
6530-X	DOT-E 6530	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders (modes 1, 2).
6530-X	DOT-E 6530	Brown Welding Supply, Inc., Salina, KS.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders (modes 1, 2).
6691-X	DOT-E 6691	Union Carbide Corporation, Danbury, CT.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To authorize use of DOT Specification 3A or 3AA cylinders over 35 years old which may be retested every 10 years, for transportation of certain flammable and nonflammable compressed gases (modes 1, 2, 3, 4, 5).
6735-X	DOT-E 6735	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.252	To authorize transport of bromine in a non-DOT specification cylinder constructed in accordance with all requirements of DOT Specification 4B, 4BA or 4BW except that the cylinder shall be marked "DOT-E 6735" in lieu of the DOT specification marking (modes 1, 2, 3).
6743-X	DOT-E 6743	Atlas Powder Company, Dallas, TX.	49 CFR 173.114a(h)(3), 173.182.	To authorize shipment of an oxidixing material and a blasting agent in DOT Specification 56 or 57 portable tanks (mode 1).
6765-X	DOT-E 6765	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.318(a), 176.76(h)(4).	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas (modes 1, 3).
6874-X	DOT-E 6874	Harrisons & Crosfield (Pacific), Inc., Emerville, CA.	49 CFR 172.101, 173.370(a)(13).	To become a party to Exemption 6874 (modes 1, 2, 3).
6883-X	DOT-E 6883	Hedwin Corporation, Baltimore, MD.	49 CFR 173.119, 173.154, 173.221, 173.245(a)(26), 173.249(a)(1), 173.250a(a)(1), 173.256(a), 173.257(a)(1), 173.263(a)(28), 173.265(d)(6), 173.266(b)(8), 173.272(g), 173.272(i)(9), 173.277(a)(6), 173.287(c)(1), 173.288,173.289(a)(1), 173.292(a)(1), 173,346(a), 178.19.	To authorize manufacture, marking and sale of non-DOT specification molded polyethylene containers, for shipment of oxidizers, poison B, corrosive liquids, organic peroxides and flammable liquids (modes 1, 2, 3).
6921-X	DOT-E 6921	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 172.101, 173.315(a)(1).	To authorize use of a insulated containerized non-DOT specification portable tank, for transportation of liquefied helium (modes 1, 3).
7052-X	DOT-E 7052	Plainview Electronics Corporation, Plainview, NY.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials, classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Rockwell International Corporation, Anaheim, CA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Ballard Technologies Corporation, North Vancouver, B.C.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Datasonics, Inc., Cataument, MA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1; 2, 3,4).
7052-P	DOT-E 7052	Wimpol, Inc., Houston, TX	49 CFR 172.101, 172,420, 175.3.	To become a party to Exemption 7052 (modes 1, 2, 3,4).
7052-X	DOT-E 7052	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Hazeltine Corporation, Braintree, MA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Eagle-Picher Industries, Inc., Joplin, MO.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	DURACELL Inc., Bethel, CT	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-P	DOT-E 7052	The Foxboro, Company, Foxboro, MA.	49 CFR 172.101, 172,420, 175.3.	To become a party to Exemption 7052 (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Sonatech, Inc., Goleta, CA	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Exploration Logging Inc., Sacramento, CA.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Moli Energy Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-P	DOT-E 7052	Malhar Corporation, Bryn Mawr, PA.	49 CFR 172.101, 172,420, 175.3.	To become a party to Exemption 7052 (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Saft Corporation of America, Cockeysville, MD.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).
7052-X	DOT-E 7052	Geophysical Research Corporation, Tulsa, OK.	49 CFR 172.101, 172,420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3,4).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
7052-X	DOT-E 7052	GTE Products Corp., Waltham, MA.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	McDonnell Douglas Corporation, St. Louis, MO.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-P	DOT-E 7052	XCELATRON, Incorporated; Chimacum, WA.	49 CFR 172.101, 172.420, 175.3.	To become a party to Exemption 7052, (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Technical Oil Tool, Corporation Norman, OK.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	ENMET Corporation, Ann Arbor, MI.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Northrop Corp., Hawthorne, CA.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Sparton Corporation, Jackson, MI.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Flopetrol Johnston, a Division of Schlumberger, Houston, TX.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7052-P	DOT-E 7052	GEODATA Systems Limited, Wiltshire, England.	49 CFR 172.101, 172.420, 175.3.	To To become a party to Exemption 7052 (modes 1, 2, 3, 4).
7052-X	DOT-E 7052	Bren-Tronics, Inc., Commack, NY.	49 CFR 172.101, 172.420, 175.3.	To authorize shipment of batteries containing lithium and other materials classed as flammable solids (modes 1, 2, 3, 4).
7073-X	DOT-E 7073	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.354(a) (6), 174.63(b).	To authorize use of non-DOT specification portable tanks for transportation of a Class B poisonous liquid, (modes 1, 2, 3).
7073-X	DOT-E 7073	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.354(a) (6), 174.63(b).	To authorize use of non-DOT specification portable tanks for transportation of a Class B poisonous liquid, (modes 1, 2, 3).
7495-X	DOT-E 7495	Brewer Chemical Corp., Honolulu, HI.	49 CFR 173.315(a) (1), 173.353, 174.63(b).	To authorize methyl bromide, Class B poison, as an additional class of material (modes 1, 2, 3).
7541-X	DOT-E 7541	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of non-DOT specification portable tank for transportation of certain flammable and nonflammable compressed gases (modes 1, 3).
7598-X	DOT-E 7598	United Technologies Corp., Pratt & Whitney Mfg., East Hartford, CT.	49 CFR 173.182(b), 173.194(a), 173.234(a), 173.245(a), 173.249(a), 173.263, 173.264, 173.266, 173.268, 173.272, 173.283, 173.287, 173.352, 173.370, 173.54(a), 178.255-1(a).	To authorize shipment of certain corrosive materials, oxidizers and Class B poisons in a portable tank complying with DOT Specification 60, except the ends are bolted instead of welded (mode 1).
7654-X	DOT-E 7654	Texas Eastman Company, Longview, TX.	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid (modes 1, 2).
7753-X	DOT-E 7753	Stauffer Chemical Company, Westport, CT.	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a tight-head 55-gallon DOT Specification 17C drum (modes 1, 2, 3).
7835-P	DOT-E 7835	AmeriGas, Inc., Valley Forge, PA.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to Exemption 7835 (mode 1).
7835-P	DOT-E 7835	General Air Service & Supply, Denver, CO.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to Exemption 7835 (mode 1).
7891-X	DOT-E 7891	Sigma-Aldrich Corporation, Saint Louis, MO.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 172.504, Table 1, 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W (modes 1, 2, 4).
7891-P	DOT-E 7891	Farchan Laboratories, Inc., Gainesville, FL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 172.504, Table 1, 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To become a party to Exemption 7891 (modes 1, 2, 4).
7928-X	DOT-E 7928	Alaska Marine Highway System, State of Alaska, Juneau, AK.	49 CFR 172.101, 176.905(L).	To authorize stowage of certain hazardous materials on the vehicle deck of passenger vessels (mode 3).
7945-X	DOT-E 7945	HTL Industries, Inc., Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize use of a stainless steel other than that prescribed in the regulations, in the construction of a cylinder patterned after DOT Specification 4DS cylinders, for shipment of a nonflammable compressed gas (modes 1, 2, 4, 5).
7954-X	DOT-E 7954	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.504, 173.301(d)(2), 173.302(a)(3).	To authorize shipment of nonflammable gases in manifolded DOT Specification 3A2400, 3AA2400 or 3AAX2400 cylinders (modes 1, 3).
7991-P	DOT-E 7991	The Denver and Rio Grande Western Railroad Company, Denver, CO.	49 CFR 100-177	To become a party Exemption 7991 (mode 1).
8156-X	DOT-E 8156	Ashland Chemical, Columbus, OH.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).
8156-X	DOT-E 8156	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).
8156-X	DOT-E 8156	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).
8156-X	DOT-E 8156	Union Carbide Corporation, Danbury, CT.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
8162-X	DOT-E 8162	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of nonflammable compressed gases (modes 1, 2, 3, 4, 5).
8354-X	DOT-E 8354	Compagnie des Containers Reservoris (CCR), Paris, France.	49 CFR 173.123, 173.315.	To authorize use of a non-DOT specification portable tank, for transportation of certain liquefied petroleum gases and other gases classed as flammable liquids and flammable gases (modes 1, 2, 3).
8354-X	DOT-E 8354	VTG, Hamburg, Germany	49 CFR 173.123, 173.315.	To authorize use of a non-DOT specification portable tank, for transportation of certain liquefied petroleum gases and other gases classed as flammable liquids and flammable gases (modes 1, 2, 3).
8354-X	DOT-E 8354	ARBEL FAUVET RAIL, Paris, France.	49 CFR 173.123, 173.315.	To authorize use of a non-DOT specification portable tank, for transportation of certain liquefied petroleum gases and other gases classed as flammable liquids and flammable gases (modes 1, 2, 3).
8451-P	DOT-E 8451	Pyrotechnic Specialities, Inc., Byron, GA.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to Exemption 8451 (modes 1, 2, 4).
8453-X	DOT-E 8453	Atlas Powder Company, Dallas, TX.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent (mode 1).
8468-X	DOT-E 8468	Hedwin Corporation, Baltimore, MD.	49 CFR 173.119, 173.125, 173.154, 173.272, 173.288, 173.346.	To authorize manufacture, marking and sale of DOT Specification 34 drums of 4, 5 and 6-gallon capacity, for shipmnet of certain flammable, poison B, corrosive liquids, oxidizers and organic peroxides (modes 1, 2, 3).
8650-X	DOT-E 8650	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.354, 174.63(b).	To authorize use of a non-DOT specification steel portable tank for shipment of motor fuel antiknock compound (modes 1, 2, 3).
8650-X	DOT-E 8650	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.354, 174.63(b).	To authorize non-DOT specification portable tanks in an ISO frame containing motor fuel antiknock compound to be shipped in container-on-flat-car-service (modes 1, 2, 3).
8718-X	DOT-E 8718	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinder for use as an equipment component aboard aircraft and marine craft, for transportation of certain nonflammable compressed gases (modes 1, 2, 3, 4, 5).
8770-X	DOT-E 8770	Eastman Kodak Co., Rochester, NY.	49 CFR 172.402, 173.286(c).	To authorize shipment of a corrosive liquid and minute quantity of a flammable, poisonous solid in DOT Specification 12A, 12B or 15A fiberboard or wooden boxes with inside glass bottles (modes 1, 2, 3).
8843-X	DOT-E 8843	GOEX, Inc., Cleburne, TX	49 CFR 173.246, 175.3	To authorize manufacture, marking and sale of non-DOT specification nonrefillable cylinders, for transportation of bromine trifluoride (modes 1, 2, 3, 4).
8937-P	DOT-E 8937	Industrial Mineral Product, Inc., Ravensdale, WA.	49 CFR 173.178	To become a party to Exemption 8937 (modes 1, 2, 3).
8967-X	DOT-E 8967	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.93(a)(11)	To authorize shipment of a solid propellant explosive, in a non-DOT specification fiberboard tube, overpacked in a non-DOT specification palletized metal cage (mode 1).
9015-X	DOT-E 9015	Monsanto Company, St. Louis, MO.	49 CFR 173.217	To renew and to authorize potassium dichloro-s-triazinetrione and sodium dichloro-s-triazinetrione as additional oxidizers for shipment in bulk bags (modes 1, 2, 3).
9118-X	DOT-E 9118	ICI Americas Inc., Wilmington, DE.	49 CFR 173.245(a)(38)	To authorize shipment of 1,2-benzisothiazolin-3-one in aqueous solution or dispersion, either by itself or in combination with ethylenediamine or sodium hydroxide, in DOT Specification 57 steel portable tanks (modes 1, 2, 3).
9168-X	DOT-E 9168	All-Pak, Inc., Pittsburgh, PA	49 CFR 172.400, 172.504, 173.118, 173.244, 173.345, 173.346, 173.359, 173.370, 173.377, 175.3, 175.33.	To authorize manufacture, marking and sale of specially designed composite type packaging, for shipment of small quantities of various flammable, corrosive, and poison B liquids and solids shipped without POISON, CORROSIVE, or FLAMMABLE labels (modes 1, 2, 4).
9176-X	DOT-E 9176	Minnesota Valley Engineering, New Prague, MN.	49 CFR 173.304(a), 177.840(a)(1).	To authorize manufacture, marking and sale of DOT Specification 4L cylinders, for transportation of certain nonflammable gases (mode 1).
9181-X	DOT-E 9181	Honeywell, Inc., Horsham, PA.	49 CFR 173.206, 173.21, 173.247.	To authorize a DOT Specification 17C drum as overpack and to require the electical connector of the piston actuator to be covered with a Faraday shield cap (mode 1).
9184-X	DOT-E 9184	Midwest Carbide Corporation, Keokuk, IA.	49 CFR 173.178	To authorize shipment of calcium carbide in polyethylene lined woven polypropylene collapsible bags in truckload or carload lots only (modes 1, 2).
9184-X	DOT-E 9184	Cynamid Canada, Inc., East Willowdale, Canada.	49 CFR 173.178	To authorize shipment of calcium carbide in polyethylene lined woven polypropylene collapsible bags in truckload or carload lots only (modes 1, 2).
9195-X	DOT-E 9195	Owens-Illinois, Inc., Toledo, OH.	49 CFR 173.119(b)(4)	To authorize manufacture, marking and sale of DOT Specification 12B fiberboard boxes with inside bottles of plastic other than polyethylene, of one quart capacity, for shipment of certain insect control chemicals (modes 1, 2, 3).
9251-X	DOT-E 9251	Orchard Supply Company of Sacramento, Sacramento, CA.	49 CFR 173.245	To authorize shipment of a corrosive liquid, n.o.s. in DOT Specification 51 portable tanks (mode 1).
9275-P	DOT-E 9275	Boyle-Midway, New York, NY.	49 CFR Parts 100-199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9275-P	DOT-E 9275	Firmenich, Inc., Princeton, NJ.	49 CFR Parts 100-199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9275-P	DOT-E 9275	Hercules, Incorporated, Wilmington, DE.	49 CFR Parts 100-199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9275-P	DOT-E 9275	Carter-Wallace, Inc., New York.	49 CFR Parts 100-199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9275-P	DOT-E 9275	Mary Kay Cosmetics, Dallas, TX.	49 CFR Parts 100-199	To become a party to Exemption 9275 (modes 1, 2, 3, 4, 5).
9340-X	DOT-E 9340	Pioneer Plastics & Services Co., Ltd., Brampton, Ont., Canada.	49 CFR 178.19, 178.253 Part 173, Subpart F.	To authorize a 540 gallon capacity polyethylene portable tank for shipment of certain corrosive liquids (modes 1, 2).
9529-P	DOT-E 9529	Viskaske Corporation, Chicago, IL.	49 CFR 173.21	To become a party to Exemption 9529 (modes 1, 3).
9545-X	DOT-E 9545	Medical Diagnostics, Inc., Columbia, MD.	49 CFR 173.118(a)	To authorize rail as an additional mode of transportation (modes 1, 2).

NEW EXEMPTIONS

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
9414-N	DOT-E 9414	Union Carbide Corporation, Danbury, CT.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane in DOT Specification 3AL aluminum cylinders (modes 1, 3).
9513-N	DOT-E 9513	American Cyanamid Company, Wayne, NJ.	49 CFR 173.343, 173.377.	To authorize transport of an organic phosphate formulation in a bulk motor vehicle (mode 1).

NEW EXEMPTIONS—Continued

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
9518-N	DOT-E 9518	Hawthorne Aviation Inc., Hawthorne, NV.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), PART 107, APPENDIX B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment (mode 4).
9520-N	DOT-E 9520	Atlantic Richfield Company, Pasadena, CA.	49 CFR 173.315(h), 173.315(i), 173.32(n) 178.245-1, 178.245-4, 178.245-5.	To authorize a one time shipment of a nonflammable gas in thirty (30), non-DOT specification ASME Code "U" stamped portable tanks (modes 1, 3).

EMERGENCY EXEMPTIONS

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9574-N	DOT-E 9574	Chugach Electric Association, Inc., Anchorage, AK.	49 CFR 172.101 column 6, 173.315, 175.30.	To authorize use of non-DOT specification ASME Code "U" Stamped portable tank containing 4,000 pounds of carbon dioxide (mode 4).
EE 9575-N	DOT-E 9575	Schlumberger Well Services, Rosharon, TX.	49 CFR 172.101 column 6(b), 175.30, 175.320(b).	To authorize transport of shaped charges, commercial, and detonating cord, aboard cargo aircraft (mode 4).

WITHDRAWALS

Application number	Applicant	Regulation(s) Affected	Nature of exemption thereof
8522-P	Ashland Oil, Inc., Dublin, OH	49 CFR 177.839(a), 177.839(b), 178.150, Part 173 Subpart F	To become a party to Exemption 8522. (modes 1, 2, 3).

Denials

9444-N—Request by Champion Chemicals, Inc., Houston, TX to authorize reuse, without subjecting drums to the cleaning and rinsing steps of the reconditioning process of DOT Specification, Series 17 steel drums, for shipment of certain solvent-based intermediate materials, classed as flammable liquids denied February 5, 1986.

9482-N—Request by Dow Corning Corporation, Midland, MI to authorize transport of fammable liquids which are also corrosive materials in DOT specification 51 portable tanks denied February 18, 1986.

9556-N—Request by American Fireworks Company, Hudson, OH to authorize highway transport of limited quantities of certain special fireworks (Class B exposives) as fammable solid denied February 11, 1986.

Issued in Washington, DC, on March 13, 1986

J.R. Grothe,

Chief, Exemptions Branch Office of Hazardous Materials Transportation.

[FR Doc. 86-6042 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

Grants and Cooperative Agreements; Elderly, Handicapped and Rural Programs in Insular Areas

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of policy.

SUMMARY: In response to a request from the Guam Mass Transit Authority (GMTA), the Urban Mass Transportation Administration (UMTA) announces its policy to provide for the consolidation of section 16(b)(2) and section 18 grants to the Insular Areas, as provided for in 48 U.S.C. 1469a. Public comment is invited. Consolidated of these grant programs is intended to minimize application and reporting requirements.

48 U.S.C. 1469a permits Federal agencies to streamline and consolidate certain grant-in-aid programs, such as the section 16(b)(2) elderly and handicapped program and the section 18 rural program, available to the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. These areas are referred to collectively as the U.S. Insular Areas. Specifically, 48 U.S.C. 1469a permits:

(a) Agencies to consolidate any or all grants to each of these Insular Areas and to waive requirements for matching funds, applications, and reports with respect to the consolidated grants, and

(b) Each Insular Area to use the consolidated grant funds for any purpose or program authorized for any of the consolidated grants.

In light of this provision UMTA will permit Guam and other interested Insular Areas to consolidate section 18 and section 16(b)(2) grants.

Consolidation of these UMTA grant programs and application requirements should improve the efficiency of grant-making procedures. This is especially important for the Insular Areas since they have small staff resources which have been strained to fulfill the existing application and reporting requirements of the affected programs, and since the amount of funding under the affected programs is not large.

In addition, 48 U.S.C. 1469a(d) allows an agency to waive any local matching share requirements of less than $200,000 for grants to Insular Areas.

Insular Areas interested in submitting applications for consolidated grants and/or local share waivers should notify the appropriate UMTA Regional Office for application procedures and

consolidation requirements. Among other things, the Area should identify the intended use of consolidated funds and should show that the transportation of the elderly and handicapped will not be adversely affected. Applications should be submitted in accordance with section 18 and section 16(b)(2 circulars as determined by UMTA.

DATE: This policy is effective immediately. However, UMTA is interested in receiving comments on this policy. Comments must be received within 60 days of this publication.

ADDRESS: Comments on this policy should be submitted to the UMTA Docket Number 85-A, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, DC 20590. All written communications received on or before this comment period will be considered in determining whether adjustments to this policy may be warranted.

All comments and suggestions made will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA, if a self-addressed stamped postcard is included with each amount.

FOR FURTHER INFORMATION CONTACT: Daniel Duff, Assistant Chief Counsel for Legislation and Regulation, Office of the Chief Counsel, Room 9228, Telephone (202) 426-4011, UMTA, 400 Seventh Street, SW., Washington, DC 20590.

Issued on: March 17, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86-6104 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 54
Thursday, March 20, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:53 a.m. on Friday, March 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the liquidation of an asset acquired by the Corporation from The Bowery Savings Bank, New York City (Manhattan), New York (Case No. 46,458).

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: March 17, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-6212 Filed 3-18-86; 12:24 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Friday, March 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt: (1) A resolution (a) making funds available for the payment of insured deposits in Farmers and Merchants State Bank of Lamberton, Lamberton, Minnesota, which had been closed by the Deputy Commissioner of Commerce for the State of Minnesota on Friday, March 14, 1986, (b) accepting the bid of American Bank Mankato, Mankato, Minnesota, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank, and (c) designating American Bank Mankato, Mankato, Minnesota, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank; and (2) an Order approving the application of American Bank Mankato, Mankato, Minnesota, for consent to purchase certain assets of and to assume the liability to pay certain deposits made in Farmers and Merchants State Bank of Lamberton, Lamberton, Minnesota, and for consent to establish the sole office of Farmers and Merchants State Bank of Lamberton as a branch of American Bank Mankato.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 17, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-6213 Filed 3-18-86; 12:24 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

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, March 24, 1986, 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.

Application for consent to merge and establish one branch:

The German American Bank, Jasper, Indiana, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Ireland, Ireland, Indiana, and for consent to establish the sole office of Bank of Ireland as a branch of the resultant bank.

Application for consent to purchase assets and assume liabilities:

First National Bank of Versailles, Versailles, Kentucky, for consent to purchase certain assets of and assume the liability to pay deposits made in the Versailles Branch of Future Federal Savings Bank, Louisville, Kentucky, a non-FDIC-insured institution.

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. 46,452-L (Amendment)
First National Bank, Snyder, Texas
Case No. 46,453-SR (Amendment)
State Bank of Alexandria, Alexandria, Nebraska
Case No. 46,459
The New Boston Bank and Trust Company, Boston Massachusetts
Case No. 46,460
Mutual Savings Banks, New York Region Consolidation

Memorandum and resolution re: Delegations of authority to the Director, Division of Bank Supervision, to grant written approval for repayment of net worth certificates.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation

pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendments to Parts 303 and 309 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and "Disclosure of Information," respectively, which (1) require persons who have filed notices with the Corporation under the Change in Bank Control Act of 1978 ("CBCA") (12 U.S.C. 1817(j)), to publish an announcement of the notice's acceptance in a newspaper; and (2) make certain information regarding CBCA notices accepted by the Corporation available to the public upon request.

Memorandum and resolution re: Final amendments to Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," which amendments define the category of demand deposit and prohibit payment of interest on demand deposits.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 17, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-6214 Filed 3-18-86; 12:24 p.m.]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

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, March 24, 1986, 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), (c)(9)(B), and (c)(10) 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.

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 meetings.

Discussion Agenda:

Recommendations regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report, December 31, 1985

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, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 17, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-6215 Filed 3-18-86; 12:24 pm]

BILLING CODE 6714-01-M

5

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 11:00 a.m., Monday, March 24, 1986.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202) 377-6677.

MATTERS TO BE CONSIDERED: Deposit, Share, and Withdrawable Accounts.

Dated: March 17, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-6145 Filed 3-18-86; 9:03 am]

BILLING CODE 6720-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 26, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of office space needs of the Federal Reserve Board. (This item was originally announced for a closed meeting on March 17, 1986.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-6254 Filed 3-18-86; 3:15 pm]

BILLING CODE 6210-01-M

7

POSTAL SERVICE

By telephone vote on March 14 and 17, 1986, a majority of the members contacted and voting, the Board voted to add to the agenda for the closed session on Monday, April 7, 1986, the following item:

Consideration of proposed temporary third-class domestic mail classification schedule changes—sacking requirements.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and §7.3(c) of title 39, Code of Federal Regulations, discussion of the matter is exempt from the open meeting

requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, classification, and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board also determined that pursuant to section 552b(c)(10) of title 39, United States Code, and §7.3(j) of title 39 Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing.

In accordance with section 552b(f)(1) of title 5, United States Code, and §7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code, and §7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 86-6252 Filed 3-18-86; 3:15 pm]

BILLING CODE 7710-12-M

federal register

Thursday
March 20, 1986

Part II

Department of Transportation

Urban Mass Transportation Administration

Revised Fiscal Year 1986 UMTA Formula Grant Apportionments

DEPARTMENT OF TRANSPORTATION

Revised Fiscal Year 1986 UMTA Formula Grant Apportionments

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Surface Transportation Assistance Act of 1982 (Pub. L. 97–424) established a formula grant program for Fiscal Years 1984, 1985, and 1986 under section 9 and section 18 of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). A notice published in the **Federal Register** on January 24, 1986 (51 FR 3310), provided the Fiscal Year 1986 apportionment of funds to each urbanized area over 200,000 in population, and to State Governors for both urbanized areas under 200,000 in population and nonurbanized areas. However, in light of the then pending reductions required by Gramm-Rudman-Hollings legislation, that Notice stated that only 50% of the apportionment would be available until further notice. Since the required reductions have now been determined, this Notice provides the revised apportionments. In addition, this Notice also includes revised apportionments for the section 16(b)(2) elderly and handicapped program.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 426–2053, 400 Seventh Street, SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: A program of Federal assistance to urban mass transportation systems by means of formula grants for capital and operating assistance was enacted January 6, 1983, under the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424). The legislation is authorized for Fiscal Years 1984, 1985, and 1986. Funds for Fiscal Year 1986 were appropriated by the Department of Transportation and Related Agencies Appropriations Act, 1986, Pub. L. 99–190 (the Fiscal Year 1986 Appropriations Act).

Section 9 and 18 Programs

A Notice published in the **Federal Register** on January 24, 1986 (51 FR 3310), provided the Fiscal Year 1986 apportionment of section 9 and section 18 funds for urbanized and nonurbanized areas, based on census information and operating and financial data submitted for the 1984 section 15 Annual Report. However, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings), Pub. L. 99–177, required reductions to be made in Fiscal Year 1986 funding availability to meet deficit reduction targets. These reductions for UMTA total 4.3 percent of Fiscal Year 1986 appropriated funds (in the case of the Formula program, a $92,450,000 reduction from $2,150,000,000).

Therefore, this Notice provides revised apportionment tables which reflect these required reductions. Since the section 9 apportionment tables include adjustments to correct previous data errors and, in addition, contain the apportionment of prior year unobligated section 5 funds, the actual figures shown do not only represent the 4.3 percent reduction.

Section 16(b) (2) Program

Governors were notified in a February 7, 1986, letter from the UMTA Administrator of the Fiscal Year 1986 apportionment under the section 16(b)(2) elderly and handicapped program. This Notice includes revised apportionments of those amounts based upon the Gramm-Rudman-Hollings reductions of 4.3 percent of Fiscal Year 1986 appropriated funds ($1,312,000 reduction from $30,500,000).

The revised section 16(b)(2) apportionments also do not reflect only the 4.3 percent reduction since the apportionment includes an amount of prior year redistributed funds, and since the section 16(b)(2) administrative formula provides a basic floor level of funding for each State. Also, some States received additional funding in Fiscal Year 1984 and 1985 in order to hold them harmless to Fiscal Year 1983 funding levels during the transition to the new section 16(b)(2) formula based on the 1980 census data. That transition is completed and States are no longer being held harmless to Fiscal Year 1983 levels.

Application Procedures

Applications for Section 9 funds should be submitted to the appropriate UMTA Regional Office in conference with UMTA Circular 9030.1, published June 27, 1983. Applications for section 18 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9040.1, published May 23, 1985. Applications for section 16(b)(2) funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9070.1A, published May 14, 1985.

Issued on: March 14, 1986.

Ralph L. Stanley,

Administrator.

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS, AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

Urbanized area	Apportionment
Akron, Ohio	$4,021,271
Albany-Schenectady-Troy, New York	5,901,650
Albuquerque, New Mexico	3,527,803
Allentown-Bethlehem-Easton, Pa.-N.J	2,994,919
Ann Arbor, Michigan	2,059,455
Atlanta, Georgia	22,141,631
Augusta, Georgia-South Carolina	1,299,610
Austin, Texas	3,221,657
Bakersfield, California	1,959,173
Baltimore, Maryland	23,089,602
Baton Rouge, Louisiana	2,477,951
Birmingham, Alabama	3,823,713
Boston, Massachusetts	60,802,242
Bridgeport, Connecticut	4,434,684
Buffalo, New York	9,228,082
Canton, Ohio	1,636,413
Charleston, South Carolina	1,142,355
Charlotte, North Carolina	2,925,262
Chattanooga, Tennessee-Georgia	1,959,120
Chicago, Illinois-Northwestern Indiana	162,638,650
Cincinnati, Ohio-Kentucky	9,572,570
Cleveland, Ohio	21,307,081
Colorado Springs, Colorado	2,341,228
Columbia, South Carolina	1,151,993
Columbus, Georgia-Alabama	1,565,041
Columbus, Ohio	9,330,014
Corpus Christi, Texas	1,561,482
Dallas-Fort Worth, Texas	18,060,680
Davenport-Rock Island-Moline, Iowa-Illinois	2,365,112
Dayton, Ohio	10,527,987
Denver, Colorado	14,920,819
Des Moines, Iowa	2,330,601
Detroit, Michigan	37,408,627
El Paso, Texas	3,888,291
Fayetteville, North Carolina	1,070,625
Flint, Michigan	2,379,192
Fort Lauderdale-Hollywood, Florida	7,766,931
Fort Wayne, Indiana	1,738,196
Fresno, California	3,380,677
Grand Rapids, Michigan	3,046,388
Greenville, South Carolina	1,250,968
Harrisburg, Pennsylvania	2,063,895
Hartford, Connecticut	5,871,194
Honolulu, Hawaii	16,753,877
Houston, Texas	24,865,812
Indianapolis, Indiana	6,643,277
Jackson, Mississippi	1,517,456
Jacksonville, Florida	5,076,298
Kansas City, Missouri-Kansas	6,970,352
Knoxville, Tennessee	1,427,383
Lansing, Michigan	2,236,087
Las Vegas, Nevada	2,683,287
Lawrence-Haverhill, Mass.-New Hampshire	2,503,364
Little Rock-North Little Rock, Arkansas	1,966,014
Lorain-Elyria, Ohio	891,190
Los Angeles-Long Beach, California	122,588,912
Louisville, Kentucky-Indiana	8,276,367
Madison, Wisconsin	3,498,323
Melbourne-Cocoa, Florida	1,353,231
Memphis, Tennessee-Arkansas-Mississippi	6,702,731
Miami, Florida	19,545,932
Milwaukee, Wisconsin	14,756,606
Minneapolis-St. Paul, Minnesota	17,432,877
Mobile, Alabama	1,786,741
Nashville-Davidson, Tennessee	4,073,003
New Haven, Connecticut	5,043,478
New Orleans, Louisiana	13,257,513
Newport News-Hampton, Virginia	2,281,969
New York, N.Y.-Northeastern New Jersey	518,099,671
Norfolk-Portsmouth, Virginia	5,672,868
Ogden, Utah	2,174,324
Oklahoma City, Oklahoma	3,558,866
Omaha, Nebraska-Iowa	5,152,373
Orlando, Florida	4,073,692
Oxnard-Ventura-Thousand Oaks, California	2,254,244
Pensacola, Florida	1,191,829
Peoria, Illinois	1,964,818
Philadelphia, Pennsylvania-New Jersey	87,815,703
Phoenix, Arizona	9,489,126
Pittsburgh, Pennsylvania	27,274,823
Portland, Oregon-Washington	14,594,184
Providence-Pawtucket-Warwick, R.I.-Mass	11,321,090

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS, AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION—Continued

Urbanized area	Apportionment
Raleigh, North Carolina	1,568,036
Richmond, Virginia	4,819,412
Rochester, New York	6,513,584
Rockford, Illinois	1,562,267
Sacramento, California	7,810,465
St. Louis, Missouri-Illinois	16,379,287
St. Petersburg, Florida	6,524,143
Salt Lake City, Utah	7,616,713
San Antonio, Texas	12,389,766
San Bernardino-Riverside, California	5,528,733
San Diego, California	20,823,912
San Francisco-Oakland, California	83,381,633
San Jose, California	18,030,060
San Juan, Puerto Rico	12,847,588
Sarasota-Bradenton, Florida	2,119,802
Scranton-Wilkes-Barre, Pennsylvania	3,170,534
Seattle-Everett, Washington	29,209,489
Shreveport, Louisiana	1,992,241
South Bend, Indiana-Michigan	2,017,034
Spokane, Washington	3,915,481
Springfield-Chicopee-Holyoke, Mass.-Conn	4,465,560
Syracuse, New York	4,893,341
Tacoma, Washington	5,520,449
Tampa, Florida	5,230,959
Toledo, Ohio-Michigan	5,185,486
Trenton, New Jersey-Pennsylvania	0
Tucson, Arizona	5,114,991
Tulsa, Oklahoma	2,961,280
Washington, D.C.-Maryland-Virginia	50,901,609
West Palm Beach, Florida	3,238,628
Wichita, Kansas	2,278,685
Wilmington, Delaware-New Jersey-Maryland	2,905,228
Worcester, Massachusetts	2,396,960
Youngstown-Warren, Ohio	2,187,083
Total	1,820,456,965

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS AMOUNTS APPORTIONED TO STATE GOVERNORS FOR AREAS UNDER 200,000 POPULATION

State	Apportionment
Alabama	$4,871,977
Alaska	987,897
Arizona	425,470
Arkansas	1,435,609
California	14,573,753
Colorado	3,220,891
Connecticut	12,661,048
Delaware	0
Florida	6,733,577
Georgia	3,750,390
Hawaii	961,215
Idaho	1,394,891
Illinois	9,252,486
Indiana	5,699,159
Iowa	3,178,888
Kansas	1,366,503
Kentucky	2,891,003
Louisiana	3,376,745
Maine	1,457,694
Maryland	1,279,629
Massachusetts	6,377,394
Michigan	5,674,955
Minnesota	1,927,781
Mississippi	1,828,445
Missouri	2,253,545
Montana	1,630,709
Nebraska	1,534,806
Nevada	1,234,474
New Hampshire	1,845,686
New Jersey	1,447,023
New Mexico	699,762
New York	4,613,488
North Carolina	7,906,508
North Dakota	1,386,216
Ohio	4,490,100
Oklahoma	977,811
Oregon	3,124,704
Pennsylvania	8,947,313
Puerto Rico	6,251,434
Rhode Island	497,429

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS AMOUNTS APPORTIONED TO STATE GOVERNORS FOR AREAS UNDER 200,000 POPULATION—Continued

State	Apportionment
South Carolina	1,562,864
South Dakota	992,763
Tennessee	1,700,694
Texas	15,643,452
Utah	1,267,857
Vermont	494,347
Virginia	3,543,330
Washington	2,986,221
West Virginia	3,263,018
Wisconsin	7,419,455
Wyoming	931,742
Total	183,974,151

REVISED FISCAL YEAR 1986 UMTA SECTION 18 FORMULA APPORTIONMENTS AMOUNTS APPORTIONED TO STATES FOR NONURBANIZED AREAS

State	Apportionment
Alabama	$1,432,860
Alaska	155,916
American Samoa	21,742
Arizona	541,678
Arkansas	1,159,985
California	2,622,792
Colorado	587,638
Connecticut	533,685
Delaware	152,666
Florida	1,560,365
Georgia	1,925,261
Guam	71,345
Hawaii	186,151
Idaho	508,729
Illinois	2,108,898
Indiana	1,944,921
Iowa	1,334,253
Kansas	1,015,946
Kentucky	1,634,597
Louisiana	1,349,257
Maine	589,382
Maryland	724,099
Massachusetts	870,007
Michigan	2,342,956
Minnesota	1,361,234
Mississippi	1,300,550
Missouri	1,546,052
Montana	389,158
Nebraska	629,898
Nevada	138,230
New Hampshire	422,462
New Jersey	722,495
New Mexico	523,464
New York	2,535,073
North Carolina	2,611,847
North Dakota	320,358
Northern Mariana Islands	11,296
Ohio	2,867,451
Oklahoma	1,183,778
Oregon	918,839
Pennsylvania	3,161,115
Puerto Rico	994,327
Rhode Island	105,252
South Carolina	1,300,723
South Dakota	371,648
Tennessee	1,686,118
Texas	3,433,892
Utah	276,950
Vermont	292,794
Virginia	1,549,946
Virgin Islands	65,010
Washington	1,017,003
West Virginia	1,040,949
Wisconsin	1,594,883
Wyoming	236,860
Total	59,984,784

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS; GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

State/Urbanized area	Percentage of State total	Amount
ALABAMA		
Governor's apportionment for areas 50,000 to 200,000 population		$4,871,977
Anniston	0.086822528	422,997
Auburn-Opelika	0.053977303	262,976
Decatur	0.063229779	308,054
Dothan	0.055416054	269,986
Florence	0.084918670	413,722
Gadsden	0.080022591	389,868
Huntsville	0.178566225	869,971
Montgomery	0.266398907	1,297,889
Tuscaloosa	0.130647942	636,514
ALASKA		
Governor's appointment for areas 50,000 to 200,000 population		987,897
Anchorage	1.000000000	987,897
ARIZONA		
Governor's apportionment for area 50,000 to 200,000 population		425,470
Yuma, Ariz.-Calif	1.000000000	425,470
ARKANSAS		
Governor's apportionment for areas 50,000 to 200,000 population		1,435,609
Fayetteville-Springdale	0.237883535	341,508
Fort Smith, Ark.-Okla	0.355694045	510,638
Pine Bluff	0.326152749	468,228
Texarkana, Tex.-Ark	0.080269670	115,236
CALIFORNIA		
Governor's apportionment for areas 50,000 to 200,000 population		14,573,753
Antioch-Pittsburg	0.056144233	818,232
Chico	0.026000699	378,928
Fairfield	0.035404375	515,975
Hemet	0.027081338	394,677
Lancaster	0.022669529	330,380
Modesto	0.106368320	1,550,186
Napa	0.037061544	540,126
Palm Springs	0.025166937	366,777
Redding	0.020791165	303,005
Salinas	0.068773745	1,002,292
Santa Barbara	0.097778333	1,424,997
Santa Cruz	0.055662277	811,208
Santa Maria	0.031478975	458,767
Santa Rosa	0.077742782	1,133,004
Seaside-Monterey	0.072148587	1,051,476
Simi Valley	0.048443711	706,007
Stockton	0.127055944	1,851,682
Visalia	0.031503848	459,129
Yuba City	0.032594436	475,023
Yuma, Ariz.-Calif	0.000129223	1,883
COLORADO		
Governor's apportionment for areas 50,000 to 200,000 population		3,220,891
Boulder	0.247885553	798,412
Fort Collins	0.184172224	593,199
Grand Junction	0.119638374	385,342
Greeley	0.176069865	567,102
Pueblo	0.272233984	876,836
CONNECTICUT		
Governor's apportionment for areas 50,000 to 200,000 population		12,661,048
Bristol	0.079121916	561,541
Danbury, Conn.-N.Y.	0.078443563	1,948,498
Meriden	0.064422523	457,217
New Britain	0.159172573	1,129,674
New London-Norwich	0.130540869	926,470

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS; GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS—Continued

State/Urbanized area	Percentage of State total	Amount
Norwalk[1]	0.114930195	2,207,450
Stanford[1]	0.200239128	2,809,698
Waterbury[1]	0.173129234	2,620,498
DELAWARE		
FLORIDA		
Governor's apportionment for areas 50,to 200,000 population		6,733,577
Daytona Beach	0.165214252	1,112,483
Fort Myers	0.131222633	883,598
Fort Pierce	0.061892935	416,761
Fort Walton Beach	0.077553553	522,213
Gainesville	0.110314392	742,810
Lakeland	0.106491098	717,066
Naples	0.044287682	298,215
Ocala	0.044144210	297,248
Panama City	0.070912898	477,497
Tallahassee	0.118676086	799,115
Winter Haven	0.069290261	466,571
GEORGIA		
Governor's apportionment for areas 50,000 to 200,000 population		3,750,390
Albany	0.144253459	541,007
Athens	0.106583724	399,731
Macon	0.246768154	962,981
Rome	0.081261000	304,760
Savannah	0.310501815	1,164,503
Warner Robins	0.100631849	377,409
HAWAII		
Governor's apportionment for areas 50,000 to 200,000 population		961,215
Kailua-Kaneohe	1.000000000	961,215
IDAHO		
Governor's apportionment for areas 50,000 to 200,000 population		$1,394,891
Boise City	0.722095208	1,007,244
Pocatello	0.277904792	387,647
ILLINOIS		
Governor's apportionment for areas 50,000 to 200,000 population		9,252,486
Alton	0.065843006	609,211
Aurora	0.132108676	1,222,334
Beloit, Wis.-Ill	0.004716446	43,639
Bloomington-Normal	0.085989443	795,616
Champaign-Urbana	0.123690122	1,144,441
Danville	0.043117585	398,945
Decatur	0.088536812	819,186
Dubuque, Iowa-Ill	0.001798964	16,645
Elgin	0.098666155	912,907
Joliet	0.142059532	1,314,404
Kankakee	0.058277888	539,215
Round Lake Beach	0.045950951	425,161
Springfield	0.109244401	1,010,782
INDIANA		
Governor's apportionment for areas 50,000 to 200,000 population		5,699,159
Anderson	0.090936671	518,263
Bloomington	0.102630096	584,905
Elkhart-Goshen	0.103129168	587,750
Evansville, Ind.-Ky	0.231665437	1,320,298
Kokom	0.094058162	536,052
Lafayette-West Lafayette	0.146963465	837,568
Muncie	0.132141744	753,097
Terre Haute	0.098475257	561,226

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS; GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS—Continued

State/Urbanized area	Percentage of State total	Amount
IOWA		
Governor's apportionment for areas 50,00 to 200,000 population		3,178,888
Cedar Rapids	0.312701377	994,043
Dubuque, Iowa-Ill	0.167898022	533,729
Iowa City	0.132907300	422,497
Sioux City, Iowa-Nebr.-S. Dak	0.166192865	528,309
Waterloo	0.220300436	700,311
KANSAS		
Governor's apportionment for areas 50,000 to 200,000 population		1,366,503
Lawrence	0.329235236	449,901
St. Joseph, Mo.-Kans	0.005447885	7,445
Topeka	0.665316879	909,158
KENTUCKY		
Governor's apportionment for areas 50,000 to 200,000 population		2,891,003
Clarksville, Tenn.-Ky	0.055470701	160,366
Evansville, Ind.-Ky	0.059812843	172,919
Huntington-Ashland, W. VA.-Ky.-Ohio	0.141129359	408,005
Lexington-Fayette	0.545700811	1,577,623
Owensboro	0.197886286	572,090
LOUISIANA		
Governor's apportionment for areas 50,000 to 200,000 population		3,376,745
Alexandria	0.177653691	599,891
Houma	0.115544189	390,163
Lafayette	0.263904780	891,139
Lake Charles	0.228136026	770,357
Monroe	0.214761314	725,194
MAINE		
Governor's apportionment for areas 50,000 to 200,000 population		1,457,694
Bangor	0.212315735	309,491
Lewiston-Auburn	0.251581973	366,730
Portland	0.488139396	711,558
Portsmouth-Dover-Rochester, N.H.-Me	0.047962895	69,915
MARYLAND		
Governor's apportionment for areas 50,000 to 200,000 population		1,279,629
Annapolis	0.362098577	463,352
Cumberland, Md.-W. Va	0.290063593	371,174
Hagerstown, Md.-Pa	0.347837831	445,103
MASSACHUSETTS		
Governor's apportionment for areas 50,000 to 200,000 population		6,377,394
Brockton	0.237443951	1,514,274
Fall River, Mass.-R.I.	0.188895876	1,204,664
Fitchburg-Leominster	0.069765776	444,924
Lowell, Mass.-N.H.	0.202923451	1,294,123
New Bedford	0.204475183	1,304,019
Pittsfield	0.053355944	340,272
Taunton	0.043139819	275,120
MICHIGAN		
Governor's apportionment for areas 50,000 to 200,000 population		5,674,955
Battle Creek	0.089999033	510,740
Bay City	0.103287972	586,155
Benton Harbor	0.075747058	429,861

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS; GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS—Continued

State/Urbanized area	Percentage of State total	Amount
Jackson	0.107320303	609,038
Kalamazoo	0.195076858	1,107,052
Muskegon-Musekgon Heights	0.128620277	729,914
Port Huron	0.077686350	440,867
Saginaw	0.222262149	1,261,328
MINNESOTA		
Governor's apportionment for areas 50,000 to 200,000 population		1,927,781
Duluth-Superior, Minn.-Wis	0.298290847	575,040
Fargo-Moorhead, N. Dak.-Minn	0.141370602	272,532
Grand Forks, N. Dak.-Minn	0.0330541994	64,662
La Crosse, Wis.-Minn	0.014340095	27,645
Rochester	0.272748223	525,799
St. Cloud	0.239708239	462,105
MISSISSIPPI		
Governor's apportionment for areas 50,000 to 200,000 population		1,829,445
Biloxi-Gulfport	0.606110832	1,108,240
Hattiesburg	0.184761601	337,826
Pascagoula-Moss Point	0.209127567	382,378
MISSOURI		
Governor's apportionment for areas 50,000 to 200,000 population		2,253,545
Columbia	0.181963596	410,063
Joplin	0.142773670	321,747
St. Joseph, Mo.-Kans	0.234707123	528,923
Springfield	0.440555611	992,812
MONTANA		
Governor's apportionment for areas 50,000 to 200,000 population		1,630,709
Billings	0.395612195	645,128
Great Falls	0.344866928	562,378
Missoula	0.259520876	423,203
NEBRASKA		
Governor's apportionemnt for areas 50,000 to 200,000 population		1,534,806
Lincoln	0.950154973	1,458,303
Sioux City, Iowa-Nebr.-S. Dak	0.049845027	76,502
NEVADA		
Governor's apportionment for areas 50,000 to 200,000 population		1,234,474
Reno	1,000000000	1,234,474
NEW HAMPSHIRE		
Governor's apportionment for areas 50,000 to 200,000 population		1,845,686
Lowell, Mass.-N.H.	0.002438545	4,501
Manchester	0.442744197	817,167
Nashua	0.303032767	559,303
Portsmouth-Dover-Rochester, N.H.-Me	0.251784491	464,715
NEW JERSEY		
Governor's apportionment for areas 50,000 to 200,000 population		1,447,023
Atlantic City	0.700675556	1,013,894
Vineland-Millville	0.299324444	433,129

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS; GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS—Continued

State/Urbanized area	Percentage of State total	Amount
NEW MEXICO		
Governor's apportionment for areas 50,000 to 200,000 population		699,762
Las Cruces	0.533416538	373,264
Santa Fe	0.466583462	326,497
NEW YORK		
Governor's apportionment for areas 50,000 to 200,000 population		4,613,488
Binghamton	0.279828852	1,290,987
Danbury, Conn.-N.Y	0.003197697	14,753
Elmira	0.122003483	562,862
Glen Falls	0.072176050	332,983
Newburgh	0.089506656	412,938
Poughkeepsie	0.197037178	909,029
Utica-Rome	0.236250084	1,089,937
NORTH CAROLINA		
Governor's apportionment for areas 50,000 to 200,000 population		7,906,508
Asheville	0.075558357	597,403
Burlington	0.053723274	424,763
Concord	0.053581468	423,642
Durham	0.147901442	1,169,384
Gastonia	0.082485330	652,171
Goldsboro	0.041830628	330,734
Greensboro	0.165831093	1,311,145
Hickory	0.044607153	352,687
High Point	0.078627451	621,669
Jacksonville	0.062550653	415,492
Wilmington	0.063915524	505,349
Winston-Salem	0.139387625	1,102,069
NORTH DAKOTA		
Governor's apportionment for areas 50,000 to 200,000 population		1,386,216
Bismarck-Mandan	0.318685462	441,767
Fargo-Moorhead, N. Dak.-Minn	0.386936110	536,377
Grand Forks, N. Dak.-Minn	0.294378428	408,072
OHIO		
Governor's apportionment for areas 50,000 to 200,000 population		4,490,100
Hamilton	0.181179092	813,512
Huntington-Ashland, W.Va.-Ky.-Ohio	0.052518802	235,815
Lima	0.115237140	517,426
Mansfield	0.114098268	512,313
Middletown	0.128771999	578,199
Newark	0.077508284	348,020
Parkersburg, W.Va.-Ohio	0.012799829	57,473
Sharon, Pa.-Ohio	0.007685417	34,508
Springfield	0.179150675	804,404
Steubenville-Weirton, Ohio-W.Va.-Pa	0.070638439	317,174
Wheeling, W.Va.-Ohio	0.060412056	271,256
OKLAHOMA		
Governor's apportionment for areas 50,000 to 200,000 population		977,811
Enid	0.320973520	313,851
Fort Smith, Ark.-Okla	0.012156063	11,886
Lawton	0.666870417	652,073
OREGON		
Governor's apportionment for areas 50,000 to 200,000 population		3,124,704
Eugene	0.514203707	1,606,734
Longview, Wash.-Oreg	0.002632844	8,227
Medford	0.125746026	392,919
Salem	0.357417422	1,116,824
PENNSYLVANIA		
Governor's apportionment for areas 50,000 to 200,000 population		8,947,313
Altoona	0.077174727	690,506
Erie	0.197103347	1,763,545
Hagerstown, Md.-Pa	0.000639084	5,718
Johnstown	0.081167235	726,229
Lancaster	0.137809684	1,233,026
Monessen	0.047732680	427,079
Reading	0.183918037	1,645,572
Sharon, Pa.-Ohio	0.042343948	378,865
State College	0.057662270	515,922
Steubenville-Weirton, Ohio-W.Va.-Pa	0.000176471	1,579
Williamsport	0.053234944	476,310
York	0.121037572	1,082,961
PUERTO RICO		
Governor's apportionment for areas 50,000 to 200,000 population		6,251,434
Aquadilla	0.080009386	500,173
Arecibo	0.091640011	572,881
Caguas	0.214622934	1,341,701
Mayaguez	0.150299096	939,585
Ponce	0.353241780	2,208,268
Vega Baja-Manati	0.110186793	688,825
RHODE ISLAND		
Governor's apportionment for areas 50,000 to 200,000 population		497,429
Fall River, Mass.-R.I	0.217861331	108,370
Newport	0.782138669	389,058
SOUTH CAROLINA		
Governor's apportionment for areas 50,000 to 200,000 population		1,562,864
Anderson	0.205520609	321,201
Florence	0.216505405	338,368
Rock Hill	0.193761240	302,822
Spartanburg	0.384212746	600,472
SOUTH DAKOTA		
Governor's apportionment for areas 50,000 to 200,000 population		992,763
Rapid City	0.363413810	360,784
Sioux City, Iowa-Nebr.-S.Dak	0.010462344	10,387
Sioux Falls	0.626123846	621,593
TENNESSEE		
Governor's apportionment for areas 50,000 to 200,000 population		1,700,694
Bristol, Tenn.-Bristol, Va	0.096994436	164,958
Clarksville, Tenn.-Ky	0.183644002	312,322
Jackson	0.177359257	301,634
Johnson City	0.273361835	464,905
Kingsport, Tenn.-Va	0.268640470	456,875
TEXAS		
Governor's apportionment for areas 50,000 to 200,000 population		$15,643,452
Abilene	0.037183113	581,672
Amarillo	0.066115035	1,034,267
Beaumont	0.050184520	7685,059
Brownsville	0.051681542	808,478
Bryan-College Station	0.035542963	556,015
Galveston	0.028913277	452,304
Harlingen-San Benito	0.027787978	434,700
Killeen	0.042371712	662,840
Laredo	0.067930323	1,062,665
Longview	0.026650446	416,905
Lubbock	0.077783403	1,216,801
McAllen-Pharr-Edinburg	0.080833437	1,264,512
Midland	0.032710907	511,712
Odessa	0.049386647	772,578
Port Arthur	0.044571764	697,256
San Angelo	0.033456508	523,375
Sherman-Denison	0.020685205	323,588
Temple	0.019092261	298,669
Texarkana, Tex.-Ark	0.018258768	285,630
Texas City-La Marque	0.036791451	575,454
Tyler	0.033614132	525,841
Victoria	0.026254742	410,715
Waco	0.050320965	787,194
Wichita Falls	0.041878902	655,131
UTAH		
Governor's apportionment for areas 50,000 to 200,000 population		1,267,857
Provo-Orem	1.000000000	1,267,857
VERMONT		
Governor's apportionment for areas 50,000 to 200,000 population		$494,347
Burlington	1.000000000	494,347
VIRGINIA		
Governor's apportionment for areas 50,000 to 200,000 population		3,543,330
Bristol, Tenn.-Bristol, Va	0.036235960	128,396
Charlottesville	0.148464466	526,059
Danville	0.104609124	370,665
Kingsport, Tenn.-Va	0.007005092	24,821
Lynchburg	0.146392725	518,718
Petersburg-Colonial Heights	0.200839926	711,642
Roanoke	0.356452707	1,263,030
WASHINGTON		
Governor's apportionment for areas 50,000 to 200,000 population		2,986,221
Bellingham	0.121333911	362,330
Bremerton	0.148992269	444,924
Longview, Wash.-Oreg	0.118787872	354,727
Olympia	0.150025195	448,008
Richland-Kennewick	0.244733674	730,829
Yakima	0.216127079	645,403
WEST VIRGINIA		
Governor's apportionment for areas 50,000 to 200,000 population		3,263,018
Charleston	0.364170562	1,188,295
Cumberland, Md.-W.Va	0.005410634	17,655
Huntington-Ashland, W.Va.-Ky.-Oio	0.235730335	769,192
Parkersburg, W.Va.-Ohio	0.155082619	507,037
Steubenville-Weirton, Ohio-W.Va.-Pa	0.061496712	200,665
Wheeling, W.Va.-Ohio	0.178109138	581,173
WISCONSIN		
Governor's apportionment for areas 50,000 to 200,000 population		7,419,455
Appleton	0.167284251	1,241,158
Beloit, Wis.-Ill	0.043604138	323,519
Duluth-Superior, Minn.-Wis	0.019605671	145,463
Eau Claire	0.065130677	483,234
Green Bay	0.126488585	938,476
Janesville	0.052837962	392,029
Kenosha	0.120906523	897,060
La Crosse, Wis.-Minn	0.070143272	520,425
Oshkosh	0.062829975	466,164
Racine	0.153933161	1,142,100

REVISED FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS; GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS—Continued

State/Urbanized area	Percentage of State total	Amount
Sheboygan	0.065589135	486,636
Wausau	0.051646651	383,190
WYOMING		
Governor's apportionment for areas 50,000 to 200,000 population		931,742
Casper	0.532792106	496,425
Cheyenne	0.467207894	435,317
Total	183,974,151	

[1] An appropriate amount for commuter rail from UZA's above 200,000 has been included.

REVISED FISCAL YEAR 1986 UMTA SECTION 16(b)(2) APPORTIONMENTS TO STATES

State	Apportionment
Alabama	531,212
Alaska	136,434
American Samoa	50,758
Arizona	397,003
Arkansas	410,196
California	2,277,187
Colorado	341,977
Connecticut	438,619
Delaware	177,303
District of Columbia	192,474
Florida	1,581,403
Georgia	603,866
Guam	127,394
Hawaii	192,538
Idaho	205,732
Illinois	1,240,954
Indiana	630,965
Iowa	453,565
Kansas	384,332
Kentucky	505,467
Louisiana	496,454
Maine	246,934
Maryland	481,716
Massachusetts	762,525
Michigan	944,549
Minnesota	531,605
Mississippi	390,817
Missouri	686,632
Montana	197,027
Nebraska	299,281
Nevada	183,184
New Hampshire	212,936
New Jersey	884,865
New Mexico	229,082
New York	2,042,794
North Carolina	676,777
North Dakota	191,969
Northern Mariana Islands	50,397
Ohio	1,164,256
Oklahoma	455,639
Oregon	385,072
Pennsylvania	1,457,169
Puerto Rico	373,030
Rhode Island	236,399
South Carolina	391,400
South Dakota	201,582
Tennessee	601,786
Texas	1,348,530
Utah	219,852
Vermont	175,451
Virginia	575,262
Virgin Islands	128,589
Washington	499,141
West Virginia	337,406
Wisconsin	601,613
Wyoming	156,434
Total	$29,697,554

[FR Doc. 86-6105 Filed 3-19-86; 8:45 am]

BILLING CODE 4910-57-M

federal register

Thursday
March 20, 1986

Part III

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1435

Loan and Purchase Programs; Sugar Producers Protection; Proposed Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

Protection of Sugar Producers

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth provisions which are designed to protect sugar producers as mandated by section 401(e)(2) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985. Under the rule, the Commodity Credit Corporation (CCC) will pay sugar producers the maximum benefits from the sugar price support program, less benefits previously received by the producers, in the event of the insolvency of the processor with whom they have entered into a contract for the processing of sugar beets or sugarcane. Interested persons are invited to submit written comments on the proposed rule.

DATES: Comments must be received on or before April 10, 1986 in order to be assured of consideration.

ADDRESS: Send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Ross ballard, Program Specialist, Cotton, grain, and Rice Price Support Division, Agricultural Stabilization and Conservation service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447-4704.

SUPPLEMENTARY INFORMATION: The Information collection requirements proposed by this rule will not become effective until they have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Such approval has been requested and is under consideration. Comments concerning the information collection requirements contained in this rule may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, DC 20503, Telephone (202) 395-7340.

This proposed rule has been reviewed under USDA procedures established in accordance with the provisions of Departmental Regulations 1512-1 and Executive Order 12291 and has been classified "not major." The provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Statutory Authority

This activity is required pursuant to section 401(e) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985.

Section 401(e)(2) of the 1949 Act provides that if bankruptcy or other insolvency of a sugar processor caused producers of sugar beets and sugarcane not to receive maximum benefits from the sugar price support program within 30 days after the final settlement date provided for in the contract between such producers and processor, the Secretary of Agriculture, through CCC, on demand of the producers and on such assurances as to nonpayment as the Secretary may require, shall pay such producers the maximum benefits from the price support program, minus any benefits previously received by the producers. Section 401(e)(2) of the 1949 Act creates an obligation under which the Secretary is required to pay producers amounts which, previously, the producers could legally only recover from the bankrupt or insolvent sugar company through bankruptcy or insolvency proceedings.

The payments which are made available to producers in accordance with the terms and conditions of this regulations are subject to reduction to the extent required by the Balanced Budget and Emergency Deficit Control Act of 1985, Title II of Pub. L 99-177 (popularly known as the "Gramm-Rudman-Hollings Act").

Need for Immediate Action

Some producers of 1984 crop sugar beets that were delivered to a processor participating in the 1984 sugar program will not receive the maximum benefit of the price support program as a result of the bankruptcy or other insolvency of the processor. These producers are eligible to apply for payment because the final settelement date provided for in their contract with the sugar processor was after January 1, 1985. Therefore, the comment period with respect to this proposed rule is limited to 21 days. Comments are requested and should be submitted on or before April 10, 1986 in order to be assured of consideration.

Major Program Provisions

Producer Eligibility

Only those producers whose contracts with their processors had a final settlement date after January 1, 1985 and who have not received the maximum price support benefits due to the bankruptcy or other insolvency of a processor who was a participant in the sugar price support program would be eligible for payment. Producers of sugar beets and sugarcane that contracted with processors not participating in the sugar price support program would not be eligible for payment under this subpart.

Subrogation

In order to be eligible to receive a payment from CCC under this subpart a producer must subrogate to CCC all claims against the processor and other persons responsible for nonpayment. CCC would then have the authority to pursue such claims against the processor and other persons responsible for nonpayment to recover any benefits not paid to the producers in accordance with the terms and conditions of the sugar price support program.

Administration

A producer who has not received at least the price support level applicable to that producer's crop of sugar beets or sugarcane from a processor participating in the price support program may apply at the producer's local county Agricultural Stabilization and

Conservation Service (ASCS) office for payments made available under this subpart. The application must be submitted no earlier than 30 days after, and no later than 60 days after, the final settlement date provided for in the contract between the producer and the processor. A request for payment must be made by producers or their designated agent on a form prepared by CCC. Commodity Credit Corporation expects that this form will include (1) a certification as to the quality and quantity of the sugar beets or sugarcane that the producer delivered to the processor, (2) a certification concerning liens or other encumbrances with respect to such sugar beets or sugarcane, and (3) an agreement by the producer regarding subrogation. CCC also expects that county offices will verify some of the information obtained from producers and identify possible claims due to CCC, and this material will be forwarded to a central location which will (1) perform necessary compliance checks and (2) disburse payments. In the case of eligible producers of 1984 crop sugar beets, the final date for producers to apply for payment will be 30 days following the effective date of the final rule. Producers must provide information required by CCC to assure eligibility.

List of Subjects in 7 CFR Part 1435

Agriculture, Loan programs, Payments, Price support programs, Sugar.

Proposed Rule

PART 1435—[AMENDED]

Accordingly, it is proposed that a new subpart be added to 7 CFR Part 1435 as follows:

A new subpart consisting of §§ 1435.200 through 1435.206 is added to read as follows:

Subpart—Regulations Governing the Protection of Sugar Producers

Sec.
1435.200 General statement.
1435.201 Definitions.
1435.202 Producer eligibility.
1435.203 Benefit payment to producers.
1435.204 Liens.
1435.205 Subrogation of claims.
1435.206 OMB control number assigned pursuant to Paperwork Reduction Act.

Subpart—Regulations Governing the Production of Sugar Producers

Authority: Sec. 401(e)(2), Agricultural Act of 1949 (7 U.S.C. 1421(e)(2)); 5 U.S.C. 301.

§ 1435.200 General statement.

If the bankruptcy or other insolvency of a processor has caused producers of sugar beets or sugarcane not to receive maximum benefits from the price support program for sugar beets or sugarcane within 30 days after the final settlement date provided for in the contract between such producers and processor, CCC, on demand of the producers and on such assurances as to nonpayment as CCC may require, shall pay such producers benefit payments.

§ 1435.201 Definitions.

The following definitions apply to terms used in this subpart:

"ASCS" means the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

"Benefit payment(s)" means an amount to be paid to eligible producers equal to the difference between the specified price support level for the applicable crop of sugar beets or sugarcane, after all applicable adjustments, and any benefits previously received by the producers with respect to such crop of sugar beets and sugarcane.

"CCC" means the Commodity Credit Corporation, United States Department of Agriculture.

§ 1435.202 Producer eligibility.

(a) A producer of sugar beets or sugarcane shall be considered to be eligible for benefit payments only: (1) For that quantity of domestically-produced sugar beets or sugarcane sold under contract to a processor who was a participant in the price support program for sugarcane or sugar beets for the applicable corp; (2) if the contract with the processor provided for a final settlement date after January 1, 1985; (3) if the processor failed to make payment on the final settlement date due to bankruptcy or other insolvency; and (4) if the producer was an eligible producer for purposes of the price support program for the applicable crop of sugar beets or sugarcane.

(c) CCC may require as a condition of payment such documentation or other proof of the producer's eligibility, the processor's nonpayment, or other element of the benefit payment as CCC determines appropriate.

§ 1435.203 Benefit payment to producers.

(a) *Where to request benefit payments.* A producer must request a benefit payment from CCC at the producer's local county ASCS office, in a manner and on a form prescribed by CCC.

(b) *Availability dates.* A producer must request a benefit payment no earlier than 30 days, and no later than 60 days, after the final settlement date provided for in the contract between the producer and the processor, unless otherwise approved by CCC. In the case of eligible producers of 1984 crop sugar beets, the final date for producers to demand a benefit payment shall be 30 days following the effective date of this regulation, unless otherwise approved by CCC.

(c) *Method of payment.* Benefit payments will be made by checks drawn on CCC, by credit to the producer's account, or by such other means as CCC determines appropriate.

§ 1435.204 Liens.

(a) In order to receive a benefit payment, a producer must certify to CCC whether there were any liens or encumbrances on the sugar beets or sugarcane that that producer sold to the applicable processor under the applicable contract as of the time of delivery of the sugar beets or sugarcane to the processor, or as of the time title to the sugar beets or sugarcane transferred from the producer if title transferred at a time other than at the time of delivery to the processor. If there were any such liens or encumbrances, the producer must provide CCC with a certified list of all such liens or encumbrances together with the names and addresses of the holders of such liens or encumbrances and the amount held by each such holder.

(b) Commodity Credit Corporation will make all benefit payments jointly to the producer and the holders of such liens or encumbrances unless the producer provides CCC with a waiver of all such liens or encumbrances by each such holder or a certified statement by such holder that the liens or encumbrances have been extinguished. Commodity Credit Corporation may prescribe the form for such waivers or statements.

§ 1435.205 Subrogation of claims.

(a) A producer must execute an agreement with CCC, acceptable to CCC, subrogating to CCC all claims of that producer against the processor and other persons responsible for nonpayment. Any recoveries by that producer from any source whatsoever for the processor's nonpayment must be immediately forwarded to CCC. The producer shall cooperate with CCC in CCC's efforts to collect on the claims subrogated to CCC.

(b) A producer shall maintain the books and records pertaining to the benefit payments and the applicable contracts with the processor for a period of at least 3 years following the producer's demand for payment under

this subpart. Authorized officials of the United States Department of Agriculture shall have access to, and right to examine, any pertinent books, documents, papers and records of the producer.

§ 1435.206 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1435.200 through 1435.206) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0095.

Signed at Washington DC, on March 17, 1986.

Milton J. Hertz,

Acting Executive Vice President, CCC.

[FR Doc. 86-6089 Filed 3-19-86; 9:58 am]

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