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# Presidential Documents

Title 3—

## The President

### Memorandum of October 10, 1987

**Memorandum for the Director of the Office of Management and Budget**

By the authority vested in me as the President of the United States by Section 301 of Title 3 of the United States Code, I hereby authorize the Director of the Office of Management and Budget to submit the notification required by Section 251(d)(3)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
*Washington, October 10, 1987.*

[FR Doc. 87-24000
Filed 10-13-87; 2:54 pm]
Billing code 3195-01-M

# 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 315 and 316

### Noncompetitive Appointment of Certain Former Overseas Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to permit eligible family members of U.S. Government personnel who have served overseas to be appointed noncompetitively to Stateside civil service positions upon their return. The regulations implement E.O. 12585, which modified the eligibility criteria for appointment.

**EFFECTIVE DATE:** November 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ed McHugh or Ellen Russell, (202) 632–6817.

**SUPPLEMENTARY INFORMATION:** On April 30, 1987, OPM published interim regulations in the **Federal Register** (52 FR 15705) to implement Executive Order 12585 of March 3, 1987. The order expands the eligibility of family members for noncompetitive appointment which was first provided under E.O. 12362 in May 1982.

The new Executive order revises the eligibility criteria for noncompetitive appointment. The Order:

- *Reduces* the amount of overseas employment needed to qualify for noncompetitive appointment from 24 months to *18 months;*
- *Increases* the period during which the family member can be hired after returning to the United States from 2 to *3 years* (with provision for further extension in hardship cases);
- Makes family members of *nonappropriated fund employees* who have worked overseas eligible for Stateside employment on the same basis as family members of civilian employees and military personnel; and
- Allows Federal agencies in the United States to waive requirements for a written test when hiring family members for jobs that are similar to those they held overseas.

Eligible candidates for this program must also be U.S. citizens at the time they apply for appointment in the United States and must have received a fully successful or better performance rating for their overseas service. They must provide documentation of their overseas service and family member status when applying for employment in the United States.

The provisions of Executive Order 12585 were effective upon publication of the interim regulations on April 30, 1987. During the comment period we received comments from one agency and one union. Both comments concerned the provision in § 315.608(f) for extending the normal 3-year period of eligibility in situations where a family member is incapacitated for employment or is stationed in an area with no significant Federal employment opportunities. The agency suggested OPM delegate to agencies the authority to make such extensions. The regulation already contains this provision. The union suggested the regulations contain a maximum time limit on such extensions. OPM does not believe this approach is consistent with delegating to agencies the authority to make decisions in individual cases. In addition, since the regulations clearly delineate the conditions under which an individual's period of eligibility can be extended, we do not believe it is necessary to set a maximum time limit.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only apply to Federal employees.

**List of Subjects in 5 CFR Parts 315 and 316**

Government employees.

U.S. Office of Personnel Management.
**Constance Horner,**
*Director.*

Accordingly, OPM's interim regulations in 5 CFR Parts 315 and 316 published on April 30, 1987, at 52 FR 15705, are adopted as final with the following change:

**§ 315.608 [Amended]**

1. The definition of nonappropriated fund employee under § 315.608(b) is revised to remove the words "Army and Air Force Motion Picture Service,".

[FR Doc. 87–23800 Filed 10–14–87; 8:45 am]
BILLING CODE 6325–01–M

### 5 CFR Parts 831, 870, and 890

### Civil Service Retirement, Federal Employees Group Life Insurance, and Federal Employees Health Benefits Coverage for DC Government Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is revising its regulations to reflect the exclusion of the District of Columbia (DC) Government employees first hired on or after October 1, 1987, from Civil Service Retirement coverage, Federal Employees' Group Life Insurance coverage and Federal Employees Health Benefits Program coverage. The Federal Employees' Retirement System Act of 1986 excluded these employees from these and other benefits normally accruing to Federal employees. These final regulations will update OPM's regulations and make them conform with the law as recently amended.

**EFFECTIVE DATE:** October 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Ray, (202) 632–4634.

**SUPPLEMENTARY INFORMATION:** Subsections (f), (k), and (l) of section 207 of title II of Pub. L. 99–335, the Federal Employees' Retirement System Act of 1986, enacted on June 6, 1986, specifically excluded individuals "first employed by the government of the District of Columbia" on or after October 1, 1987, from coverage under the Civil Service Retirement System, (CSRS), the Federal Employees' Group Life Insurance (FEGLI) Program, and the

Federal Employees Health Benefits (FEHB) Program, respectively. Therefore, on May 8, 1987, OPM published interim regulations in the **Federal Register** (52 FR 17387) effective on June 8, 1987, to conform the existing regulations to the exclusions cited in the recently enacted law

Two written comments were received during the 60-day comment period. One comment was from a Federal agency. The other comment was from the DC government. Both respondents pointed out that Pub. L. 98–621, enacted on November 8, 1984, the "St. Elizabeths Hospital and District of Columbia Mental Health Services Act", afforded the Federal employees of St. Elizabeths Hospital statutory protection of many of the benefits of Federal employment they enjoyed if they accepted offers of employment with the new administrator to that facility, the DC government.

OPM was aware of this legislation and of the transfer of responsibility for St. Elizabeths Hospital from Federal authority to the DC government. We did not specifically address the Federal employees of St. Elizabeths Hospital in our interim regulations since we knew that the Department of Health and Human Services and the DC government were working together to accomplish this transition and that both parties were aware of the specificity of the law concerning the continuation of certain benefits. However, in view of the concerns expressed by both parties that the lack of a direct reference to St. Elizabeths Hospital employees in our interim regulations might lead to misunderstanding by the affected employees, we are amending the final regulations to address the continuation of retirement and health and life insurance coverage for these employees.

**Waiver Of 30-Day Delay In Effective Date Of Final Regulations**

Pursuant to section 553(d)(3) of title 5 of the U.S. Code, I find that good cause exists for making these amendments effective in less than 30 days. The general exclusions cited in these regulations were contained in Pub. L. 99–335 that was enacted on June 6, 1986, and have been a matter of law since that time. The specific exemptions for Federal employees of St. Elizabeths Hospital have been in effect since the enactment of Pub. L. 98–621 on November 8, 1984. These regulations are being made effective immediately so that OPM regulations will conform with these laws and to remove any areas of uncertainty concerning the benefits entitlements of Federal employees of Saint Elizabeths Hospital who might be considering job offers from the DC Government.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect future employees of the District of Columbia government only.

**List of Subjects**

*5 CFR Part 831*

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 870*

Administrative practice and procedure; Government employees, Life insurance, Retirement.

*5 CFR Part 890*

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

Accordingly, OPM's interim regulations published on May 8, 1987 (52 FR 17387), are adopted as final with the following changes:

## PART 831—RETIREMENT

### Subpart B—Coverage

1. The authority citation for Subpart B of Part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347.

2. In § 831.201, paragraph (g) is revised to read as follows:

**§ 831.201 Exclusions from retirement coverage.**

* * * * *

(g) Individuals first employed by the government of the District of Columbia on or after October 1, 1987, are excluded from subchapter III of chapter 83 of title 5, United States Code. However, employees of St. Elizabeths Hospital who were hired before January 1, 1984, and who were covered under subchapter III of chapter 83 of title 5, United States Code, and accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621, continue to be covered by this Part.

## PART 870—BASIC LIFE INSURANCE

### Subpart B—Coverage

3. The authority citation for Part 870 continues to read as follows:

**Authority:** 5 U.S.C. 8716.

4. In § 870.202, paragraph (a)(8) is revised to read as follows:

**§ 870.202 Exclusions.**

(a) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621.

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

5. The authority citation for Part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C. 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251, 100 Stat. 20.

6. In § 890.102, paragraph (c)(8) is revised to read as follows:

**§ 890.102 Coverage.**

* * * * *

(c) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621.

* * * * *

[FR Doc. 87–23799 Filed 10–14–87; 8:45 am]

BILLING CODE 6325–01–M

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1660

### Allocation of Fiduciary Responsibility

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401 through 8479), as amended by Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, and Pub. L. 99–556, the Federal Employees' Retirement System Technical Corrections Act of 1986, to administer the Thrift Savings Plan for federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600–1699. The Executive Director of the Board is publishing in Part 1660 interim regulations concerning the procedures for allocation of fiduciary responsibilities by Fiduciaries of the Plan.

**DATES:** Interim rules effective October 15, 1987; comments must be received on or before November 15, 1987.

**ADDRESS:** Comments may be sent to: James B. Petrick, Federal Retirement Thrift Investment Board, Post Office Box 18899, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** James B. Petrick, (202) 653–2573.

**SUPPLEMENTARY INFORMATION:** Section 1660.1 contains definitions of the terms used in this Part. Section 1660.2 contains general provisions as to the powers, duties and responsibilities of Plan Fiduciaries. Section 1660.3 provides that a Fiduciary may allocate one or more fiduciary responsibilities to persons described in 8477(a)(3) (C) and (D). Section 1660.4 prescribes the procedures for an allocation under § 1660.3. Section 1660.5 describes the legal effect of an allocation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations will affect only internal government procedures related to the Thrift Savings Plan.

### Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

### Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations are being published as interim regulations because the Thrift Savings Plan is now in operation and it is necessary to have procedures in place as soon as possible for the allocation of fiduciary responsibilities by Fiduciaries of the Plan.

### List of Subjects in 5 CFR Part 1660

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

**Francis X. Cavanaugh,**

*Executive Director.*

Title 5 of Code of Federal Regulations is amended to add Part 1660 to Chapter VI to read as follows:

## CHAPTER IV—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

## PART 1660—ALLOCATION OF FIDUCIARY RESPONSIBILITY

**Subpart A—General**

1660.1 Definitions.
1660.2 General.

**Subpart B—Allocation Procedures**

1660.3 Allocation of fiduciary duties.
1660.4 Procedures for allocation.
1660.5 Effect of allocation.

Authority: 5 U.S.C. 8477(e)(1)(E), 8474(b)(5); Section 114(a) of Pub. L. 99–556 (Oct. 27, 1986).

### Subpart A—General

#### § 1660.1 Definitions.

Terms used in this Part shall have the following meanings:

"Act" means the Federal Employees' Retirement System Act of 1986, as amended.

"Allocation of fiduciary duty" means the process whereby the allocating Fiduciary is legally relieved of reponsibility for the errors and omissions of the receiving Fiduciary in carrying out the allocated duty or duties.

"Board" means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472.

"Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board as defined in 5 U.S.C. 8401(13) and 5 U.S.C. 8474.

"Fiduciary" means a fiduciary as defined in 5 U.S.C. 8477(a)(3) (A), (B), (C), and (D).

#### § 1660.2 General.

Any Fiduciary shall exercise only the powers, duties, responsibilities and obligations specifically provided under the provisions of the Act and the regulations issued pursuant thereto, or properly allocated pursuant to this Part. A Fiduciary may act in more than one fiduciary capacity. A Fiduciary shall be solely responsible for the proper exercise of that Fiduciary's own powers, duties, responsibilities and obligations only to the extent provided by the aforesaid Act and regulations or as properly allocated pursuant to this Part, and shall not be responsible for any act or failure to act of any other Fiduciary or other person except as provided therein. A Fiduciary may rely on any other Fiduciary to meet the obligations and responsibilities and exercise all duties and powers in accordance with the provisions of the aforesaid Act and regulations, and is not required, except as provided by the aforesaid Act and regulations, to inquire into the propriety of any action or lack thereof by any other Fiduciary. No Fiduciary guarantees the Thrift Savings Fund against investment loss or depreciation in asset value.

### Subpart B—Allocation Procedures

#### § 1660.3 Allocation of Fiduciary Duties.

Subject to the limitations contained in this Part, a Fiduciary may allocate one or more fiduciary responsibilities to a person or persons described in subparagraph (C) or (D) of 5 U.S.C. 8477 (a)(3).

#### § 1660.4 Procedures for Allocation.

An allocation permitted by § 1660.3 shall be accomplished only in accordance with the following procedures:

(a) The allocation shall be in writing and shall be signed by the Executive Director and acknowledged by the receiving Fiduciary.

(b) The allocation shall set forth the duties and responsibilities allocated, either in the body of the allocation, or by reference to another ducument.

#### § 1660.5 Effect of Allocation.

A Fiduciary who allocates a responsibility to another Fiduciary pursuant to this Part shall not be liable for the acts or omissions of such other Fiduciary in carrying out the allocated duties and responsibilities, except as otherwise provided in the Act.

[FR Doc. 87–23853 Filed 10–14–87; 8:45 am]

BILLING CODE 6760-01-M

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 932 and 944**

# Olives Grown in California; Establishment of Grade and Size Requirements for Limited Use Styles of Processed Olives for the 1987–88 Season, Changes in Incoming and Outgoing Size Requirements, and Conforming Changes in the Olive Import Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule establishes grade and size requirements for processed olives used in the production of limited use styles of olives such as wedges, halves, slices or segments. The olives to be used for these purposes are too small to be desirable for use as whole or pitted processed olives. However, they are satisfactory for use in the production of limited use styles where the form of the olives is changed, and their use can help the California olive industry meet the increasing market needs of the food service industry. This action also changes certain incoming and outgoing size ranges to allow smaller olives to be included in limited use styles and whole and pitted olives. Similar changes will be made in the import regulation to conform with the domestic requirements.

**DATES:** Interim final rule effective upon publication. Comments which are received by November 16, 1987 will be considered prior to issuance of the final rule.

**ADDRESSES:** Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, 2085–S, Washington, DC 20090–6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the date and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V Division, AMS, USDA, P.O. Box 96458, Room 2523–S, Washington, DC 20090–6456; telephone 202–447–5697.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Order No. 932 (7 CFR Part 932), as amended (the order), regulating the handling of olives grown in California. This 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.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be 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 considered the economic impact of this action on 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 Act and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of California olives subject to regulation under the olive marketing order and approximately 1,390 producers in California. Approximately 26 importers of olives will be subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. About 75 percent of the production comes from the San Joaquin Valley and 25 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons in the 1972–73 crop year to a high of 146,500 tons in the 1982–83 crop year. Last year's production totaled 107,900 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Because of this and the extreme variance in the size of the 1987–88 crop the industry expects the crop to be slightly more than 63,000 tons.

The primary use of California olives is for canned ripe olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking. The canned ripe olive is essentially a domestic market. Very few California olives are exported.

This action allows the use of small olives in limited use styles such as slices, wedges, and halves rather than whole or pitted processed olives. It has long been accepted and established by the industry that these smaller sizes are not desirable for whole or pitted use because their flesh to pit ratio is too low. For the 1987–88 crop year, handlers will be permitted to use a higher percentage of undersize olives than last year to meet increasing needs for sliced, wedged, chopped, and halved olives.

Natural condition (unprocessed) olives received from growers must meet incoming sizes requirements. The sizes and quality of olives delivered by growers form the basis by which they are paid for their olives. Processed olives must meet outgoing size and quality requirements to assure consumers of a product of uniform size and quality. This action will allow handlers to market more olives than would be permitted in the absence of these relaxations in size requirements. This additional opportunity is provided to maximize the use of the California olive supply, facilitate market expansion, and benefit both growers and handlers.

This action modifies §§ 932.151, 932.152, and 932.153 of Subpart—Rules and Regulations (7 CFR 932.108–932.161) and establishes grade and size regulations for 1987–88 crop year limited use size olives and allows more small olives to be used in certain sizes of canned whole or pitted olives. These rules are issued pursuant to §§ 932.51 and 932.52 of the order. This action also makes necessary conforming changes in the olive import regulation (Olive Regulation 1, 7 CFR 944.401). The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order the same requirements must be imposed on the imports. It is AMS's view that this action will benefit importers because this action permits importers to use larger percentages of undersized limited use size olives and allows more small olives to be used in certain sizes of canned whole pitted olives.

Section 932.52(a)(3) provides that processed olives smaller than the sizes prescribed for whole and pitted styles may be used for limited uses if recommended annually by the

committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in the various size categories. The section further provides for the establishment of size tolerances.

To enhance supplies and allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1987–88 crop year (August 1–July 31). The grade requirements are the same as those applied during the 1986–87 crop year, as are the sizes. However, the size tolerances have been increased for the various categories to make more undersize olives available for use in the production of limited use styles. The size tolerance specified in §§ 932.153(b)(2), and (3) are increased from 25 percent to 35 percent; the tolerances in §§ 932.153(b)(4) and (5) are increased from 20 percent to 35 percent. Permitting handlers to use larger percentages of undersized fruit in limited use style canned olives will have a positive impact on industry returns. In the absence of this action, undersized fruit would have to be used for noncanning uses, like oil, for which returns are lower.

Section 944.401(b)(12) of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and pitted ripe olives to be used for limited use styles if they meet specified size requirements. The preceding changes authorizing certain olives to be used in limited use styles during the 1987–1988 crop year, and the changes in the limited use size tolerances require similar changes in § 944.401(b)(12) to bring the import regulation into conformity with the applicable domestic requirements.

Section 932.51 of the order specifies size designations in addition to those contained in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52). This action adds a new paragraph (g) to § 932.151 which modifies these designations to change the approximate count per pound of petites and extra large Sevillano "L" 's from 160 and 82, to 166 and 86, respectively, and changes the average count range (per pound) for extra large Sevillano "L" from 76–88, inclusive to 76–90, inclusive. This eliminates a gap between the smallest Sevillano canning size (average count 65–75) and undersize Sevillano olives (average count above 91) and also allows more small olives to be utilized.

In addition, this action also changes certain average count ranges contained in Tables I and II in § 932.152 in order to permit smaller olives to be included in the various size designations in conformity with the committee's recommendations to allow more small olives to be used for limited use styles and smaller olives to be used for whole and pitted styles. This is expected to have a positive effect on industry returns and benefit both growers and handlers.

The average count ranges per pound in Table I for Extra Large Ascolano, Barouni, and St. Agostino olives in Variety Group 1 and all Extra Large olives in Variety Group 2 are changed from 65–88 to 65–90. Because of the change in Table I, this action also makes necessary conforming changes in the olive import regulation, § 944.401(b)(3) which provides size requirements for Ascolano, Barouni, and St. Agostino olives in Variety Group 1. The minimum weight for such olives would be changed from 1/88 pound to 1/90 pound each.

In Table II, which is redesignated as Table III by this action, the average count ranges per pound for Large and Extra Large variety Group 2 olives are changed from 89–105 and 65–88 to 91–105 and 65–90, respectively. Table III is contained in § 932.152(g)(2). These changes bring the average count ranges per pound into conformity with those specified in Table I and the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Parts 52.3751–52.3764) that establishes a count of 91–105 for "large" canning size olives.

This action also establishes a new Table II in § 932.152(g)(1) with average count ranges per pound for Variety Groups 1 and 2 limited use size olives for easier reference.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the recommendation of the committee, it is determined that grade and size requirements for limited use olives for the 1987–88 crop year should be established, and that the use of small olives for such purposes during the 1987–88 crop year will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public proceedings with regard to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The 1987–88 crop year has already begun; (2) handlers are aware of this action as proposed by the California Olive Committee; (3) compliance with this regulation will require no special preparation by handlers or importers; (4) this action relieves restrictions on handlers and importers; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

**List of Subjects in 7 CFR Parts 932 and 944**

Marketing agreements and orders, Olives, California, Imports.

For the reasons set forth in the preamble, Parts 932 and 944 are amended as follows:

## PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citations for 7 CFR Parts 932 and 944 continue to read as follows:

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

2. Section 932.153 is revised to read as follows:

**§ 932.153 Establishment of grade and size requirements for processed 1987–88 crop year olives for limited use.**

(a) *Grade.* On and after August 1, 1987, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1987, and meet the grade requirements specified in § 932.52(a)(1) as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1987, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1987, through July 31, 1988, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1987, or after July 31, 1988.

(2) Variety group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weighs 1/90 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/90 pound;

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weighs 1/40 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/40 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which

individually weighs 1/180 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weighs 1/140 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

3. Section 932.151 is amended by adding a new paragraph (g) as follows:

**§ 932.151 Incoming regulations.**

* * * * *

(g) *Additional Marketing Order Size Designations.* Pursuant to the authority in § 932.51(a)(1)(ii), the following additional size designations are established:

| Designation(s) | Approximate count (per pound) | Average count range (per pound) |
|---|---|---|
| Subpetite | | 181 and up. |
| Petite | 166 | 141-180, inclusive. |
| Extra Large Sevillano "L" | 86 | 76-90, inclusive. |
| Extra Large Sevillano "C" | 70 | 65-75, inclusive. |

* * * * *

4. Section 932.152 is amended by revising paragraphs (f) and (g) to read as follows:

**§ 932.152 Outgoing regulations.**

* * * * *

(f) *Size designations.* (1) In lieu of the size designations specified in § 932.52(a)(2), except as provided in § 932.51(a) (1) and (2), canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the marketing order size designations listed in Table I contained herein, and shall be of a size not smaller than the applicable size requirements, tolerances, and percentages listed in paragraphs (a)(2) (i), (ii), (iii), and (iv) of § 932.52.

TABLE I.—CANNED WHOLE RIPE OLIVE SIZES AVERAGE COUNT RANGES (PER POUND)

| Size designation | Variety Group 1 | | Variety Group 2 | |
|---|---|---|---|---|
| | Except Ascolano Barouni St. Agostino | Ascolano Barouni St. Agostino | Obliza | Except obliza |
| Small | N.A. | N.A. | N.A. | 128-140 |
| Medium | N.A. | N.A. | 106-121 | 106-121 |
| Large | N.A. | N.A. | 91-105 | 91-105 |
| Ex. Large | 65-75 | 65-90 | 65-90 | 65-90 |
| Jumbo | 51-60 | 51-60 | 51-60 | 51-60 |
| Colossal | 41-50 | 41-50 | 41-50 | 41-50 |
| Sup. Colossal | (1) | (1) | (1) | (1) |

N.A.—Not Applicable.
[1] 40 or fewer.

(2) The size of the canned whole olives shall conform with the applicable count per pound range indicated in Table I of paragraph (f)(1) of this section. When the count per pound of whole olives falls between two count ranges, the size designation shall be that of the smaller size. The size of the other styles of canned ripe olives shall be determined prior to pitting. The average count for canned whole ripe olives is determined from all containers in the sample and is calculated on the basis of the drained weight of the olives.

(g) *Size certification.* (1) When limited size olives for limited use styles are authorized during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(i), any lot of limited use size olives may be used in the production of packaged olives for limited use styles without an outgoing inspection for size designation if such olives are within the average count range in Table II contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

TABLE II.—LIMITED USE SIZE OLIVES

| Variety | Average count range (per pound) |
|---|---|
| Group 1, except Ascolano, Barouni, and St. Agostino. | 76-90, inclusive. |
| Group 1, Ascolano, Barouni, and St. Agostino. | 91-140, inclusive. |
| Group 2, except Obliza. | 141-180, inclusive. |
| Group 2, Obliza | 128-140, inclusive. |

(2) When limited use size olives are not authorized for limited use styles during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(ii), any lot of canning size olives may be used in the production of packaged olives for whole, pitted, or limited use styles without an outgoing inspection for size designation if such olives are within the average count range in Table III contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

TABLE III.—AVERAGE COUNT RANGES (PER POUND)

| Size designation | Variety Group 1 | | Variety Group 2 | |
|---|---|---|---|---|
| | Except Ascolano, Barouni, St. Agostino | Ascolano, Barouni St. Agostino | Obliza | Except obliza |
| Small | N.A. | N.A. | N.A. | 128–140 |
| Medium | N.A. | N.A. | 106–121 | 106–121 |
| Large | N.A. | N.A. | 91–105 | 91–105 |
| Ex. Large | 65–75 | 65–90 | 65–90 | 65–90 |
| Jumbo | 51–60 | 51–60 | 51–60 | 51–60 |
| Colossal | 41–50 | 41–50 | 41–50 | 41–50 |
| Sup. Colossal | (1) | (1) | (1) | (1) |

N.A.—Not Applicable.
[1] 40 or fewer.

* * * * *

## PART 944—FRUITS; IMPORT REGULATIONS

5. Section 944.401(b) is amended by revising paragraph (b)(3) and the introductory text of paragraph (b)(12) to read as follows:

**§ 944.401 Olive Regulation 1.**

* * * * *

(b) * * *

(3) Canned whole ripe Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties shall be of such size that not more than 25 percent, by count, of the olives may weigh less than 1/90 pound (5 grams) each except that not more than 10 percent, by count, of the olives may weigh less than 1/68 pound (4.6 grams) each:

* * * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period October 15, 1987 through July 31, 1988, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

* * * * *

6. In § 944.401(b)(12), subparagraphs (i) through (x) remove the words "25 percent" or "20 percent" wherever they appear and add, in their place, the words "35 percent."

Dated: October 7, 1987.

Robert C. Keeney,

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

[FR Doc. 87–23878 Filed 10–14–87; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1308

### Schedules of Controlled Substances; Temporary Placement of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) in order to temporarily place 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxy-amphetamine and 4-methylaminorex into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA. This action is based on a finding that the scheduling of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxy-amphetamine and 4-methylaminorex is necessary to avoid and imminent hazard to the public safety. As a result of this rule, the regulatory controls and criminal sanctions imposed on a Schedule I substance under the CSA will be applicable to the manufacture, distribution and possession of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxy-amphetamine and 4-methylaminorex.

**EFFECTIVE DATE:** October 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

**SUPPLEMENTARY INFORMATION:** Notice of intent to temporarily place 3,4-methylenedioxy-N-ethylaphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA were published in the **Federal Register** on August 13, 1987 (52 FR 30174–75 and 52 FR 30175–77). The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473) which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place substances into schedule I of the CSA if he finds that such action is necessary to avoid and imminent hazard to the public safety. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (28 CFR 0.100).

The Administrator transmitted notice of his intention to temporarily place 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services. In response to the notification, the Food and Drug Administration has advised DEA that none of the three substances being proposed for emergency scheduling are currently being investigated under the Food, Drug and Cosmetic Act nor are they the subject of approved new drug applications. Therefore, the Food and Drug Administration has no objections to the placement of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA. No comments have been received from any other interested parties.

Based upon the information and data contained in the notices of intent (52 FR 30174–75 and 52 FR 30175–77), the Administrator, pursuant to Section 201(h) of the CSA (21 U.S.C. 811(h)) and

28 CFR 0.100, has found that scheduling 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex in Schedule I of the CSA, on a temporary basis, is necessary to avoid an imminent hazard to the public safety.

Regulations that are effective on October 15, 1987 and imposed on 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex are as follows:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports or exports 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3, 4-methylenedioxyamphetamine or 4-methylaminorex or who proposes to engage in the manufacture, distribution, importation, exportation or research of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex shall obtain a registration to conduct that activity by October 15, 1987, pursuant to Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and packaging.* All labels on commercial containers of, and all labeling of, 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex which are packaged after October 15, 1987 shall comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotes for 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxy-amphetamine or 4-methylaminorex shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the CFR.

5. *Inventory.* Registrants possessing 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex are required to take inventories pursuant to §§ 1304.11–1304.19 of Title 21 of the CFR.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the CFR shall do so regarding 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex.

7. *Reports.* All registrants engaged in the manufacture, packaging, labelling or distribution of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex are required to file reports pursuant to §§ 1304.35–1304.37 of Title 21 of the CFR.

8. *Order Forms.* Each distribution of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex requires the use of an order form pursuant to §§ 1305.01–1305.16 of Title 21 of the CFR.

9. *Importation and Exportation.* All importation and exportation of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex shall be in compliance with Part 1312 of Title 21 of the CFR.

10. *Criminal Liability.* Any activity with 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine or 4-methylaminorex not authorized by or in violation of the CSA or the Controlled Substances Import and Export Act occurring on or after October 15, 1987 is unlawful.

Pursuant to Title 5, U.S.C., section 605(b), the Administrator certifies that the temporary placement of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the temporary control of substances with no currently approved medical use or manufacture in the United States.

It has been determined that the temporary placement of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby amends 21 CFR Part 1308 as follows:

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b).

2. Paragraphs (g)(4) through (g)(6) are added to § 1308.11 to read as follows:

**§ 1308.11 Schedule I.**

* * * * *

(g) * * *

(4) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA)—7404

(5) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA)—7402

(6) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline)—1590

Dated: October 2, 1987.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87–23781 Filed 10–14–87; 8:45 am]

BILLING CODE 4410-09-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1613

### Equal Employment Opportunity in the Federal Government

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Revocation of adoption of Federal Personnel Manual (FPM) letters and Civil Service Commission (CSC) bulletins.

**SUMMARY:** Pursuant to Reorganization Plan No. 1 of 1978, effective January 1, 1979, all equal opportunity in federal employment enforcement and related functions vested in the former Civil Service Commission pursuant to section 717 (b) and (c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16(b) and (c); section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791; the Equal Pay Act under the Fair Labor Standards Act, as amended, 29 U.S.C. 204 *et seq.*, the Portal-to-Portal Act of 1947 as amended, 29 U.S.C. 259 and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*

were transferred to the Equal Employment Opportunity Commission (EEOC). On December 29, 1978, the EEOC adopted the substance of the following FPM letters and CSC Bulletins (See 43 FR 60901 and FPM Bulletin 720–5, dated November 29, 1979): FPM Letter 713–19, FPM Letter 713–21, FPM Letter 713–30, FPM Letter 713–32, FPM Letter 713–36, FPM Letter 713–38, FPM Letter 713–40, FPM Letter 713–42, FPM Letter 713–44, FPM Letter 551–9, CSC Bulletin 713–50, CSC Bulletin 713–43.

Guidance contained in those adopted documents is either obsolete or has been superseded by guidance issued by the EEOC. Accordingly, the EEOC has revoked its adoption of the above-referenced FPM Letters and CSC Bulletins.

**EFFECTIVE DATE:** October 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert Lowell, Hearings Program Division, Federal Sector Programs, Equal Employment Opportunity Commission, Room 422, 2401 E Street, NW., Washington, DC 20507, telephone: (202) 634–7833.

**SUPPLEMENTARY INFORMATION:** Current EEOC guidance concerning the processing of federal sector employment discrimination complaints under Title 29 CFR Part 1613, is contained in EEO Management Directive (MD) 107, dated September 1, 1987, entitled Federal Sector Complaint Processing Manual. Paragraph 3, EEO–MD 107, contains a cross-reference, where applicable, to previous guidance contained in the revoked FPM Letters/CSC Bulletins. The EEOC is disseminating copies of the manual to the EEO Directors of the various federal agencies. For additional information concerning this matter contact the above individual.

This notice has been coordinated with the U.S. Office of Personnel Management (OPM). OPM has advised the EEOC that its Issuance System Manager, Office of Planning and Evaluation, will issue a separate bulletin cancelling FPM Part 713 and those FPM Letters/CSC Bulletins previously adopted by the EEOC. Effective on the date of the publication of this **Federal Register** notice, only that guidance contained in EEO–MD 107 will govern federal sector complaint processing under Title 29 CFR Part 1613.

Accordingly, the Equal Employment Opportunity Commission hereby revokes its adoption of FPM Letters 713–19, 713–21, 713–30, 713–32, 713–36, 713–38, 713–40, 713–42, 713–44, and 551–9 and CSC Bulletins 713–50 and 713–43.

For the Commission.

**Clarence Thomas,**

*Chairman.*

[FR Doc. 87–23783 Filed 10–14–87; 8:45 am]

**BILLING CODE 6750–06–M**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 2619

### Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning November 1, 1987. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The PBGC adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after November 1, 1987, and will remain in effect until the PBGC issues new interest rates and factors.

**EFFECTIVE DATE:** November 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Foster, Attorney, Corporate Policy and Regulations Department, Code 35400, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not all toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The PBGC's regulation on the valuation of plan benefits in single-employer plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") change significantly the rules for terminating single-employer plans, the valuation rules are much the same. (SEPPAA applies to all plan terminations initiated on or after January 1, 1986.) Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination (like all insufficient plans under prior law) must value guaranteed benefits and (new under SEPPAA) benefit commitments under the plan using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit commitments, although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since October 1, 1987 (52 FR 34773 (September 15, 1987)). Changes in the financial and annuity markets now require an increase in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after November 1, 1987, which set reflects an increase of ¼ percent in the immediate interest rate to 8¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately and possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after November 1, 1987, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a

major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

**List of Subjects in 29 CFR Part 2619**

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

**PART 2619—[AMENDED]**

1. The authority citation for Part 2619 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007–11009, 11016(c)(12)–(c)(13) and 11011(a), Pub. L. 99–272, 100 Stat. 239–240, 244–252, 274 and 253–257.

2. Rate Set 70 of Appendix B is revised and Rate Set 71 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities**

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "$G_y$" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, $k_1$, $k_2$, $k_3$, $n_1$, and $n_2$ are defined in § 2619.45.

| Rate set | For Plans With a Valuation Date | | Immediate annuity rate (percent) | Deferred annuities | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $k_1$ | $k_2$ | $k_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | |
| 70 | 10–1–87 | 11–1–87 | 8.00 | 1.0725 | 1.0600 | 1.0400 | 7 | 8 |
| 71 | 11–1–87 | | 8.25 | 1.0750 | 1.0625 | 1.0400 | 7 | 8 |

Kathleen P. Utgoff,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87–23784 Filed 10–14–87; 8:45 am]

BILLING CODE 7708–01–M

**29 CFR Part 2676**

**Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281 (b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of November 1987.

**EFFECTIVE DATE:** November 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

**PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL**

1. The authority citation for Part 2676 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

**§ 2676.15 Interest.**

* * * * *

(c) *Interest rates.*

| For valuation dates occurring in the month: | The values if $i_k$ are | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_u$ |
| * | * | | | * | | * | | * | | | * | | | * | | |
| November 1987..... | .10125 | .0975 | .0925 | .0875 | .0825 | .07625 | .07625 | .07625 | .07625 | .07625 | .07 | .07 | .07 | .07 | .07 | .06 |

Issued at Washington, DC, on this 7th day of October 1987.

**Kathleen P. Utgoff,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87-23785 Filed 10-14-87; 8:45 am]

BILLING CODE 7708-01

## POSTAL SERVICE

## 39 CFR Part 111

## Nonmailable Matter; Mail Order Drug Paraphernalia and Ballistic Knives

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Domestic Mail Manual to reflect the Mail Order Drug Paraphernalia Control Act and the Ballistic Knife Prohibition Act of 1986, both enacted last year. The Mail Order Drug Paraphernalia Control Act makes it unlawful, with certain exceptions stated in the Act, for any person to use the Postal Service as part of a scheme to sell drug paraphernalia, as that term is defined by the Act. The Ballistic Knife Prohibition Act of 1986 makes ballistic knives, defined as knives with detachable blades that are propelled by a spring-operated mechanism, generally nonmailable.

**EFFECTIVE DATE:** December 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** George C. Davis, (202) 268-3076.

**SUPPLEMENTARY INFORMATION:** On April 29, 1987, the Postal Service published for comment in the **Federal Register** proposed amendments of 124.36, 124.55, and 124.56 of the Domestic Mail Manual to implement the two laws referred to in the **SUMMARY** above, which are parts of a legislative package entitled the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (52 FR 15513). The proposed amendments were explained in detail in the proposal and are not repeated here. Since no comments were received on the proposed amendments, they are being adopted without change. Accordingly, the Postal Service adopts the following changes to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Postal Service.

## PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. In 124.3, revise the heading of .36, renumber .366 as .367, and add a new .366 reading as follows:

.36 Poisons, Controlled Substances and Drug Paraphernalia.

* * * * *

.366 Drug Paraphernalia. It is unlawful to make use of the services of the Postal Service as part of a scheme to sell drug paraphernalia.

a. The term "drug paraphernalia" means any equipment, product, or material or any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (see 124.364). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or to short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

b. In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

c. 124.366 does not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute items described in 124.366; or

(2) any item that, in the normal lawful course of business, is sold through the mail, and primarily intended for use with tobacco products, including any pipe, paper, or accessory.

3. In 124.5, revise the heading of .55, the introductory paragraph of .551, .551b., .553, and .56 to read as follows:

124.5 Firearms, Knives, and Sharp Instruments (18 U.S.C. 1715, 1716).

* * * * *

.55 Switchblade and Ballistic Knives

.551 When Mailable. Knives (including sharp pointed instruments such as stilettos which lack cutting edges) having a blade which opens automatically by hand pressure applied to a button or other device in the handle, or by operation of inertia, gravity, or both, or having a detachable blade that is propelled by a spring-operated mechanism, are mailable only when sent to:

a. * * *

b. Manufacturers of such knives, or bona-fide dealers therein, in connection with a shipment made pursuant to an order from any person designated in 124.551a. (For advertisements for the mailing of switchblade and ballistic knives, see 123.431.)

* * * * *

.553 Explantation of Mailing. When in doubt as to the mailability of a proposed shipment of ballistic or switchblade knives, the postmaster will require the mailer to furnish a written statement explaining how the mailing complies with this section. If the explanation is not satisfactory, the postmaster will forward it to the appropriate Rates and Classification Center for a ruling.

.56 Marking Parcels of Firearms, Switchblades, and Ballistic Knives. No markings of any kind which would indicate the nature of the contents will be placed on the outside wrapper or container of any parcel containing firearms, ballistic or switchblade knives.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87-23851 Filed 10-14-87; 8:45 am]

BILLING CODE 7710-12-M

## 39 CFR Part 266

## Privacy of Information; Schedule of Fees

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service amends its Privacy Act regulations relating to fees that may be charged in connection with Privacy Act requests for records to make them consistent with the changes made in its FOIA fee schedule pursuant to the guidelines recently issued by the Office of Management and Budget (52 FR 10012 of March 27, 1987) implementing the fee provisions of the Freedom of Information Reform Act of 1986, and to reflect the increase in the directy cost to the Postal Service of duplicating records (from 10 cents to 15 cents per page).

**EFFECTIVE DATE:** October 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Martha J. Smith, Program Manager, Records Office (202) 268-2931.

**SUPPLEMENTARY INFORMATION:** On August 31, 1987, the Postal Service published in the **Federal Register** (52 FR 32816) proposed changes to its regulations at 39 CFR 266.8 to conform the fees charged for duplication of records under the Privacy Act to the duplication fees reflected in 39 CFR 265.8(c)(4), Freedom of Information Act (FOIA) fee regulations (52 FR 13667 of April 24, 1987). No comments were received regarding these proposed changes. However, consistent with the intent of the proposed notice, a change is made to more fully conform the duplication fees under the Privacy Act with those under the FOIA by adding a sentence to § 266.8(b)(3) to read: "If duplicate copies are furnished at the request of the requester, the per page fee is charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to § 266.8(b)(1)." This change, added for clarification, is being issued as a final rule. In effect, the duplication fee assessed for processing a request for information maintained within a privacy system of records would be consistent with the fee charged for processing a request for information about an individual made by the subject of the information pursuant to the FOIA.

### List of Subjects in 39 CFR Part 266

Postal Service, Privacy.

Accordingly, Part 266 of 39 CFR is amended as follows:

## PART 266—PRIVACY OF INFORMATION

1. The authority citation for Part 266 continues to read as follows:

**Authority:** 39 U.S.C. 401; 5 U.S.C. 552a.

2. Section 266.8 is revised to read as follows:

### § 266.8 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit duplication of records for subject individuals (or authorized representatives) while recovering the full allowable direct costs incurred by the Postal Service.

(b) *Duplication.* (1) For duplicating any paper or micrographic record or publication or computer report, the fee is $.15 per page, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. See paragraph (d) of this section for fee limitations.

(2) The Postal Service may at its discretion make coin-operated copy machines available at any location. In that event, requesters will be given the opportunity to make copies at their own expense.

(3) The Postal Service normally will not furnish more than one copy of any record. If duplicate copies are furnished at the request of the requester, the per page fee is charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to § 266.8(b)(1).

(c) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request for similar types of records down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly.

(d) *Limitations.* No fee will be charged an individual for the process of retrieving, reviewing, or amending a record pertaining to that individual.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87-23852 Filed 10-14-87; 8:45 am]

BILLING CODE 7710-12-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 64

**[Docket No. FEMA 6765]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the

effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

**EFFECTIVE DATES:** The third date ("Susp.") listed in the fourth column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6–month, and 30–day notification addressed to the Chief Executive Office that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

## PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1987, E.O. 12127.

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

**§ 64.6 List of eligible communities.**

| State | Location | Community No. | Effective dates of authorization/cancellation of sale of Flood Insurance in community | Current effective map date | Date certain Federal Assistance no longer Available in Special Flood Hazard Areas |
|---|---|---|---|---|---|
| REGION I—REGULAR CONVERSIONS | | | | | |
| Maine | Topsham, town of, Sagadahoc County. | 230122 | May 30, 1975, Emerg., Oct. 16, 1987, Reg., Oct. 16, 1987, Susp. | Oct. 16, 1987 | Oct. 16, 1987. |
| REGION III | | | | | |
| Pennsylvania | Avondale, borough of | 421473 | Apr. 22, 1980, Emerg., Nov. 4, 1987, Reg., Nov. 4, 1987, Susp. | Nov. 4, 1987 | Nov. 4, 1986. |
| Do. | Monroe, township of, Juniata County. | 421744 | Apr. 22, 1980, Emerg, Nov. 4, 1987, Reg., Nov. 4, 1987, Susp. | Nov. 4, 1987 | Do. |
| REGION IV | | | | | |
| Florida | Dade County, unincorporated areas. | 125098 | Aug. 14, 1970, Emerg., Nov. 4, 1987, Reg., Nov. 4, 1987, Susp. | Nov. 4, 1987 | Do. |
| REGION VIII—MINIMAL CONVERSION | | | | | |
| Wyoming | Elk Mountain, town of, Carbon County. | 560093 | June 2, 1987, Emerg., Nov. 4, 1987, Reg., Nov. 4, 1987, Susp. | Nov. 4, 1987 | Do. |

Code for reading fifth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
*Administrator, Federal Insurance Administration.*
[FR Doc. 87-23816 Filed 10-14-87; 8:45 am]
BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[General Docket No. 86-285]

### Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** On February 20, 1987, the Commission published a final rule in this proceeding concerning the establishment of a fee collection program. This document corrects errors in the rules amendments portion of that document.

**FOR FURTHER INFORMATION CONTACT:** Brent Weingardt, (202) 632-3906.

**SUPPLEMENTARY INFORMATION:** 1. On FR page 5289, the Table of Contents is corrected for § 1.1105 to read: "Schedule of charges for common carrier service requests."

2. On FR page 5292, § 1.1108(b) was miscodified. The paragraphs designated as (b)(i) introductory text, (A)-(D), (ii), and (iii) are hereby correctly designated as (b)(1) introductory text (i)-(iv), (2), and (3), respectively.

William J. Tricarico,
*Secretary, Federal Communications Commission.*
[FR Doc. 87-23777 Filed 10-14-87; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 85-251]

### Television Broadcasting Services; Santa Barbara, CA, et al. and Galesburg, IL, et al.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** By this document, the Commission on its own motion substitutes the following UHF television channels.

1. UHF Channel 45 for 48, Bakersfield, California;

2. UHF Channel *55 for *32, Santa Barbara, California;

3. UHF Channel 57 for 41, Ventura, California;

4. UHF Channel 67 for 63, Galesburg, Illinois;

5. UHF Channel *64 for *63, Streator, Illinois.

Originally, the above substitutions were proposed in order to implement the changes proposed in *General Docket* No. 85-172, wherein the Commission proposed additional spectrum sharing to provide sufficient communication capacity for land mobile services in certain major urban areas of the country. However, in light of the fact that Docket 85-172 is still pending, and construction permits have been granted in Bakersfield and Ventura, the Commission believes that it is in the public interest to make the proposed substitutions in order to expedite service to these communities. Furthermore, final action in this proceeding is not dependent on the outcome of the larger land mobile proceeding, since for each vacant channel proposed to be removed there is a comparable substitute channel and no oppositions have been submitted. Finally interested parties should note that the temporary freeze instituted in certain metropolitan areas pursuant to MM Docket 87-268 is applicable as follows:

(1) UHF Channel 48, Bakersfield, California; no impact, construction permit awarded;

(2) UHF Channel *55, Santa Barbara, California: applications may be accepted with a waiver request;

(3) UHF Channel 57, Ventura, California: no impact, construction permit awarded;

(4) UHF Channel 67, Galesburg, Illinois: no applications will be accepted;

(5) UHF Channel *64, Streator, Illinois: applications may be accepted with a waiver request.

**EFFECTIVE DATE:** November 23, 1987.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 85-251, adopted September 5, 1987, and released October 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

### PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), in the Table of Television Allotments, amend the entry for Bakersfield, California to remove UHF Channel 48 and add UHF Channel 45; amend the entry for Santa Barbara, California to remove Channel *32 and add Channel *55; amend the entry for Ventura, California to remove Channel 41 and add Channel 57; amend the entry for Galesburg, Illinois to remove Channel 63 and add Channel 67; amend the entry for Streator, Illinois to remove Channel *64 and add Channel *63.

Federal Communications Commission
Mark N. Lipp,
*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*
[FR Doc. 87-23848 Filed 10-14-87; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 87-72; RM-5638]

### Radio Broadcasting Services; Bartlett, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 225A to Bartlett, Tennessee, as that community's first FM service, at the request of Mid-South Frequency Monitoring Service. A site restriction of 3.2 kilometers (2.0 miles) north of the city is required. With this action, this proceeding is terminated.

**DATES:** Effective November 23, 1987; The window period for filing applications will open on November 24, 1987, and close on December 24, 1987.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87-72, adopted September 14, 1987, and released October 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's

copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, in the entry for Bartlett, Tennessee, Channel 225A is added.

**Mark N. Lipp,**

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87–23847 Filed 10–14–87; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 204, 641, and 651

**[Docket Nos. 50828–7106 and 70620–7184]**

### Reef Fish Fishery of the Gulf of Mexico and Northeast Multispecies Fishery

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

**ACTION:** Final rules; notice of OMB control numbers.

**SUMMARY:** This rule makes effective sections in the final rule implementing mandatory reporting requirements prescribed in the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) and in the final rule implementing Amendment 1 to the Fishery Management Plan for the Northeast Multispecies Fishery. The Office of Management and Budget (OMB) has approved information collection requirements (ICR) of § 641.5(g) of the Reef Fish Fishery FMP and § 651.22(f) of the Northeast Multispecies Fishery FMP Amendment 1.

**EFFECTIVE DATE:** Sections 641.5(g) and 651.22(f) are effective October 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** William R. Turner (Reef Fish Plan Coordinator), 813–893–3722, or Peter D. Colosi, Jr. (Multispecies Plan Coordinator), 617–281–3600, ext. 252.

**SUPPLEMENTARY INFORMATION:** On September 23, 1987 (52 FR 35717), NOAA published a final rule implementing mandatory reporting requirements prescribed in the final rule for the Reef Fish Fishery which becomes effective October 23, 1987. On October 2, 1987, OMB approved the ICR of § 641.5(g) for the Reef Fish Headboat logbook. On September 17, 1987 (52 FR 35093), NOAA published a final rule implementing Amendment 1 to the Northeast Multispecies Fishery FMP which was effective October 1, 1987. On October 2, 1987, OMB approved the ICR of § 651.22(f) for the Northeast Multispecies exempted fishery reporting revisions. This notice informs the public of the OMB approval of §§ 641.5(g) and 651.22(f) under control number 0648–0016.

Dated: October 8, 1987.

**Bill Powell,**

*Executive Director, National Marine Fisheries Service.*

NOAA amends 50 CFR Part 204 as set forth below:

**PART 204—[AMENDED]**

1. The authority citation for Part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. The table in § 204.1(b) is amended by adding §§ 641.5(g) and 651.22(f) in numerical order to read as follows:

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

* * * * *

(b) * * *

| 50 CFR part or section where the information collection requirement is located | Current OMB control number (all numbers begin with 0648—) |
|---|---|
| * * * * * | |
| § 641.5(g) | —0016 |
| * * * * * | |
| § 651.22(f) | —0016 |
| * * * * * | |

[FR Doc. 87–23834 Filed 10–14–87; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules.

Federal Register
Vol. 52, No. 199
Thursday, October 15, 1987

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 911 and 915

### Limes and Avocados Grown in Florida; Expenses and Assessment Rates for Specified Marketing Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 911 and 915 for the 1987–88 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

**DATE:** Comments must be received by October 26, 1987.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090–6456, telephone 202–447–5697.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order Nos. 911 (7 CFR Part 911) and 915 (7 CFR Part 915), regulating the handling of limes and avocados grown in Florida. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be 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 (AMS) has considered the economic impact of this proposed rule on 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 Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes and 34 handlers of Florida avocados under these marketing orders, and approximately 260 lime producers and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee unanimously recommended 1987–88 fiscal year expenditures of $259,000 and an assessment rate of $0.15 per bushel of fresh limes shipped under M.O. 911. In comparison, 1986–87 fiscal year budgeted expenditures were $204,000, and the assessment rate was $0.15. Major expenditure categories in the 1987–88 budget are $121,000 for program administration, $25,000 for market development, and $113,000 for research. Assessment income for 1987–88 is expected to total $210,000, based on shipments of 1,400,000 bushels of limes. Interest income will amount to $1,000. The committee also unanimously recommended that excess 1986–87 assessments ($36,763) be placed in its reserve, resulting in a reserve well within the maximum authorized under the order. Committee reserves and other available funds amounted to about $137,538 on March 31, 1987 (the end of the 1986–87 fiscal year), and will be available to cover the anticipated $48,000 deficit for 1987–88.

The Avocado Administration Committee unanimously recommended a 1987–88 fiscal year budget with estimated expenditures of $200,000 and an assessment rate of $0.11 per bushel of fresh avocados. In comparison, 1986–87 fiscal year budgeted expenditures were $193,000 and the assessement rate was $0.11. Major expenditure categories in the 1987–88 budget are $120,000 for program administration, $25,000 for market development, and $55,000 for research. Assessment income for 1987–88 is expected to total $132,000, based on shipments of 1,200,000 bushels of avocados. Interest income will amount to $10,000. The committee also unanimously recommended that excess 1986–87 assessments ($54,957) be placed in its reserve, resulting in a reserve well within the maximum authorized under the order. Committee reserves and other available funds amounted to about $100,390 on March 31, 1987 (the end of the 1986–87 fiscal year), and will be available to cover the anticipated $58,000 deficit for 1987–88.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional cost may be passed onto producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for both programs need to be expedited. The committees need to have sufficient funds to pay their expense which are incurred on a continuous basis.

**List of Subjects in 7 CFR Parts 911 and 915**

Marketing agreements and orders, Limes (Florida), and Avocado (Florida).

For the reasons set forth in the preamble, it is proposed that §§ 911.226 and 915.226 be added as follows:

1. The authority citation for both 7 CFR Parts 911 and 915 continues to read as follows:

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

2. The proposal is to add new §§ 911.226 and 915.226, to read as follows:

## PART 911—LIMES GROWN IN FLORIDA

**§ 911.226 Expenses and assessment rate.**

Expenses of $259,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.15 per bushel of limes is established for the fiscal year ending March 31, 1988. Unexpended funds from the 1986–87 fiscal year may be carried over as a reserve.

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

**§ 915.226 Expenses and assessment rate.**

Expenses of $200,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.11 per bushel of avocados is established for the fiscal year ending March 31, 1988. Unexpected funds from the 1986–87 fiscal year may be carried over as a reserve.

Dated: October 7,1987.

*Deputy Director,*

**Robert C. Kenney,**

*Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–23879 Filed 10–14–87 8:45 am]

BILLING CODE 3410–02–M

**7 CFR Part 1030**

**[Docket No. AO–361–A25]**

## Milk in the Chicago Regional Marketing Area; Emergency Partial Decision on Proposed Amendments to Marketing Agreement and to Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision adopts, on an expedited basis, amendments to the order regulating the handling of milk in the Chicago Regional marketing area based on industry proposals considered at a public hearing held at Madison, Wisconsin, on June 2–4, 1987. It establishes transfer credits on movements of bulk milk from pool plants to distributing plants for Class I use. One credit, the transportation credit, reimburses distributing plant handlers from marketwide pool funds up to .28 cents/cwt./mile on such tranfer milk. The other credit, the assembly credit, provides an 8-cent per cwt. pool reimbursement to pool plant handlers who assemble milk for transfer to bottling plants.

Marketwide service payment program were authorized by Congress when it amended the Agricultural Marketing Agreement Act of 1937 by the Food Security Act of 1985. The Food Security Improvements Act of 1986 provided further that any program providing payments for marketwide services adopted by the Secretary must be implemented not later than 120 days after a hearing is conducted. Therefore, the order changes must be effective by November 6, 1987; however, for administrative purposes November 1 is a preferable effective date. Accordingly, a recommended decision and the opportunity to file exceptions thereto have been omitted. Other issues considered at the June hearing will be dealt with in a later decision on this record.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (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.

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), 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 amendments will promote more orderly marketing of milk by producers and regulated handlers.

This action does not change the current regulatory status of any pool plant located in the Chicago Regional marketing area. It does reimburse to handlers, from pool funds, some of the costs involved in getting milk to bottling plants. This action helps equate the cost of milk for fluid handlers who receive milk by transfer with the cost of milk for fluid handlers who received milk directly from farms. This action also helps equate the monetary returns of handlers who ship milk to bottlers for Class I uses with the returns of handlers who keep their milk and realize marketing margins on finished products. The economic impact of these provisions on dairy farmers whose milk is pooled is expected to be minimal.

Prior documents in this proceeding:

*Notice of Hearing:* Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

*Extension of Time for Filing Briefs:* Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

**Preliminary Statement**

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Chicago Regional 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 through 674), and the applicable rules of practice (7 CFR Part 900), at Madison, Wisconsin on June 2–4, 1987. Notice of such hearing was issued on May 15, 1987 and published May 19, 1987 (52 FR 18894).

Interested parties were given until July 9, 1987, to file post-hearing briefs on proposals for marketwide service payments (numbers 1, 2, 3, 4, 5, and 11 as published in the hearing notice).

The material issues on the record of the hearing relate to:

1. Marketwide service payments.
2. Performance standards for pool plants.

3. Definition of supply plant and reserve supply plant.

4. Definition of producer milk.

5. Location adjustments.

6. Omission of a recommended decision and the opportunity to file written exceptions thereto with respect to material issue number 1.

This decision deals with issues 1 and 6. The remaining issues will be considered in a later decision on this record.

**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. Marketwide Service Payments.*

Payments from the Order 30 pool funds should be provided to those handlers who perform certain marketwide services. Payments should be made to distributing plant handlers in the form of a transportation credit on bulk Class I milk received by transfer from pool plants and to pool plant handlers in the form of an assembly credit on milk tranferred to distributing plants for Class I use.

The transportation credit, in most cases, would be an additional credit for distributing plant handlers on receipts of milk from other pool plants, the other credit being the location adjustment such handlers already receive on certain transfer. A transferee handler would be reimbursed from pool funds for a portion of the hauling costs through a transportation credit equal to .28 cents per mile-per hundredweight times the miles between the shipping and receiving plants and less the difference in location adjustments for the zones where the two plants are located if the milk movement is to a higher-priced zone. For instance, the per hundredweight transportation credit for a distributing plant in Zone 1 that received milk from a pool plant located 50 miles away in Zone 4 would be determined by multipling .28 cents times 50 miles, which equals 14 cents, and subtracting the difference in location adjustments for the two plants of 9 cents (the Zone 1 adjustment is zero and the Zone 4 adjustment is 9 cents). Thus, the transportation credit from the pool would be 5 cents.

At times the transportation credit would be at the maximum level of .28 cents per mile—per hundredweight times the miles between the transferor-transferee plants. This would occur in those cases where a distributing plant handler would not receive any location adjustment credit because either the transferor plant is located closer to Chicago than the transferee plant or both plants are in the same zone. There are also instances when no transportation credit would apply. This would happen when the difference in location adjustments is greater than the amount computed by multiplying .28 cents per mile—per hundredweight times the miles between the two plants. For example, a distributing plant in Zone 1 receiving milk from a pool plant located five miles away in Zone 2 would not receive a transportation credit. This would be the case because the location adjustment in Zone 2 is 3 cents, which is greater than .28 cents times 5 miles, or 1.4 cents.

The volume of Class I milk eligible for the combined hauling credit would be that currently assigned pro rata to receipts during the month of bulk fluid milk products from other pool plants multiplied by 110 percent. And, as indicated above, the transportation credit would apply to all movements of milk for Class I uses from transferor to transferee (distributing plant) regardless of the direction of the milk movements.

The assembly credit is a credit to the transferor-plant handler on bulk transfers to pool distributing plants for Class I use. The transferor plant, year round, would receive an 8-cent per hundredweight credit on its pro rata share of shipments of Class I milk to a bottler, determined on the same basis as described above.

Included in the hearing notice were proposals of Central Milk Producers Cooperative (CMPC), a federation of 11 dairy-farmer cooperatives, which would provide for payments from the Order 30 pool to those who perform certain marketwide services. Under its proposals, there would be payments made to: (1) Distributing plant handlers in the form of a transportation credit on Class I milk received by transfer from pool plants; (2) supply plant handlers in the form of an assembly credit on all milk transferred to distributing plants; (3) producers via distributing plant handlers in the form of a direct-delivery differential on all milk shipped from farms to distributing plants; and (4) producers via supply plant handlers in the form of a divert-transfer type of direct-delivery differential on all milk shipped from farms to distributing plants.

The transportation credit proposed by CMPC would provide for an additional credit at the transferee plant (i.e., distributing plant) on fluid milk products transferred in bulk between pool plants. Together with the location adjustment credits that are already in the order, each distributing plant handler would receive a total credit of .22 cents and .28 cents per mile—per hundredweight on receipts of bulk fluid milk products by transfer from pool plants for Class I uses. The rate of .22 cents would apply during the period of March through July and the .28 cent rate would apply for the August through February period. The volume of Class I milk eligible for the combined hauling credit would still be assigned pro rata to receipts during the month of producer milk and of bulk fluid milk products from other pool plants as a group; however, the milk received by transfer which is eligible for the credit would be multiplied by 110 percent and further assigned for transportation credit starting with the receipts from the nearest plant (i.e., sequentially instead of proportionately). An exception to this additional credit would occur when an adjustment for location differences between a transferor plant and a transferee plant already yields a rate greater than the rates proposed. In this case, the greater rate would still apply. One final feature of this proposal is that it would apply to all movements of milk for Class I uses from transferor to transferee, regardless of the direction of the milk movements (i.e., the traditional north and south movements and movements from south to north and west to east). Therefore, movements of milk which presently go against the grain, from a plant in a zone with a higher price than that of the distributing plant to which the milk is being transferred, and presently do not receive any price adjustment for location differences would be given a transportation credit at the full rate proposed.

CMPC's proposed assembly credit would also provide a deduction from the handler's obligation to the pool. As proposed, supply plant handlers, which transfer milk to distributing plants would be entitled to a credit of 6 cents or 8 cents per hundredweight. The 6 cents per hundredweight would apply during the period of March through July and the 8 cents per hundredweight would apply for the August through February period. This credit would apply to the total amount of milk transferred and not just on the Class I portion as proposed for the transportation credit.

The direct-delivery differentials proposed by CMPC would be deducted in the uniform price computation. Producers would receive 6 cents or 8 cents per hundredweight of milk shipped directly from their farms to the distributing plants. As with the assembly credit, the 6 cents and 8 cents per hundredweight would apply during March through July for the former and

during August through February for the latter and the payment would be based on the actual amount of the shipment. As proposed, the distributing plant handlers would be obligated to pay these proceeds to those particular producers who shipped to them directly.

The fourth marketwide service payment proposed by CMPC would provide for further deductions from the uniform price computation in order to compensate those particular producers whose milk was delivered directly to distributing plant handlers by divert-transfer. The specifics of this payment are identical to those for the direct-delivery differentials except that a supply plant handler that diverts milk to a distributing plant would be responsible for the direct-delivery differential payment to producers.

Other proponents, The Southland Corporation and Kraft, Inc. (Southland and Kraft), also offered a proposal to consider marketwide service payments. Dean Foods Company (Dean) originally was a co-proponent with these handlers, but at the hearing and in its brief Dean supported CMPC's proposals on marketwide service payments. The Southland and Kraft proposal, however, is basically a modification of CMPC's proposals for assembly credits, direct-delivery differentials and divert-transfer type of direct-delivery differentials. As such, Southland and Kraft proposed that payments from the Order 30 pool should be made to those who make milk available for Class I uses at all pool plants, regardless of whether the receiving plant is a distributing or supply plant. Also, they proposed that beyond Zones 1 and 2, the per hundredweight rate should decrease one cent for each more distant zone until no payment is realized.

As with the CMPC proposal, Southland and Kraft's assembly credit would be a deduction from the handler's obligation to the pool and the rates used would be 6 cents per hundredweight during the March-July period and 8 cents per hundred weight during the August–February period. However, the similarity ends there because: (1) Southland and Kraft's assembly credit applies to any pool plant (supply or distributing) that transfers milk to another pool supply or distributing plant, whereas CMPC's credit is for transfers from a supply plant to a distributing plant only; (2) Southland and Kraft's assembly credit would apply only on the Class I portion of the transfer whereas CMPC's would be based on the actual amount of the transfer; and (3) Southland and Kraft's assembly credit decreases 1 cent per zone for transferee plants located beyond Zone 2 whereas CMPC's credit is constant throughout the marketing area.

Southland and Kraft's direct-delivery differential and divert-transfer type of direct-delivery differential, also like the CMPC proposals would be a deduction in the uniform price computation at the 6 cent and 8 cent per hundredweight rates. However, as with Southland and Kraft's assembly credit proposal, these proposed differentials would be paid only on the Class I portion of the farm deliveries to pool plants at decreasing rates beyond Zone 2.

In its brief, Southland, on its own behalf, modified its proposal to provide for an assembly credit and direct-delivery differential on milk moved to plants for Class I and Class II uses. Also, both the assembly credit and direct-delivery differential, year-round, would be 8 cents per hundredweight for plants in Zones 1 and 2, 7 cents per hundredweight for plants in Zones 3 and 4, and 6 cents per hundredweight for plants located beyond Zone 4.

In its brief, Kraft did not concur with the Southland modification of the assembly credit and direct-delivery differentials. Furthermore, Kraft took a supporting stance concerning CMPC's proposed transportation credit, and suggested limiting the transportation credit to transfers of milk which exceed 60 miles in order to encourage direct deliveries of close-by milk, while compensating handlers when nearby milk is unavailable.

At the hearing, two farmer organizations, National Farmers Organization (NFO) and Farmers Union Milk Marketing Cooperative (FUMMC), opposed the CMPC proposals and the part of the Southland and Kraft proposal which deals with assembly credits. NFO and FUMMC did support the Southland and Kraft concept of direct-delivery differentials and divert-transfer type of direct-delivery differential; however, they did not favor the decreasing-rate schedule.

Also at the hearing, a proprietary group, the Trade Association of Proprietary Plants (TAPP), said that CMPC's proposed transportation credit had merit although they questioned the need for a reduced rate during the flush months, because in their opinion both rates are sufficiently below actual hauling costs to discourage unnecessary milk movements. In its brief TAPP supported that proposal suggesting the following limitations:

1. If a distributing plant receives enough direct-shipped milk to satisfy its Class I needs, then there would be no transportation credit on shipments received from any other pool plant, be it affiliated, (i.e., the distributing plant and supplying pool plant are owned by the same entity), or non-owned.

2. If a distributing plant does not receive enough direct-shipped milk to satisfy its Class I needs, then there would be a transportation credit on shipments received from other pool plants, however, such supplemental shipments would have to come from affiliated pool plants and the transportation credit would be snubbed at that amount resulting from shipment between the closest distributing plant-supplying pool plant pairing of affiliated plants. Only if a distributing plant does not receive enough direct-shipped milk to satisfy Class I needs and has no affiliation with other pool plants would a transportation credit apply on shipments from non-owned supplying pool plants.

Notwithstanding its support for a transportation credit, TAPP, in general, opposed all marketwide service payments. Wisconsin Cheesemakers Association (WCMA) likewise stated that the transportation credit proposal was justifiable but opposed the other marketwide service payment proposals. However, in its brief, WCMA suggested that the rate be reconsidered. Instead of the .28 cent and .22 cent per mile rate proposed, they called for the rate to be constant throughout the year, set at 50 percent of actual transportation costs. Utilizing the data introduced at the hearing, they arrived at a rate of .21 cents.

CMPC is composed of the following 11 dairy cooperatives: Alto-Golden Guernsey Cooperative, Associated Milk Producers Inc.–Morning Glory Farms Region, Independent Milk Producers Cooperative, Lake-to-Lake Division of Land O'Lakes Dairy Cooperative, Manitowoc Milk Producers Cooperative, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers, Outagamie Milk Producers Cooperative, Southern Milk Sales, Wisconsin Dairies Cooperative, and Woodstock Progressive Milk Producers Association. CMPC members account, in the aggregate, for approximately 80 percent of the milk delivered monthly to Order 30 pool plants. Also each month, approximately 94 percent of the milk allocated to Class I is received by Order 30 pool plants subject to the CMPC announced terms of sale.

In support of its proposal for payment from the Order 30 pool for a transportation credit, the spokesman for CMPC claimed that the present location adjustments do not adequately cover the cost of hauling milk from a supply plant

to a bottling plant, a milk movement that involves approximately 116 million pounds per month or 40 percent of the milk needed for fluid use, nor do they recognize all ordinary movements of milk for fluid use. He stated, however, that because the 1985 Farm Bill amended the Agricultural Marketing Agreement Act (Act) to allow payments from the pool for services of marketwide benefit, now both of these problems can be simultaneously resolved.

Proponent testified that other approaches to solving the problem of inadequate location adjustments were not acceptable. One approach, to increase the location adjustment between plants, he said, would not only increase the transportation rate but also decrease the uniform price for most producers. This, he said, could result in a mass exodus of producers from the pool. He added that one other approach, to increase the Class I differential, repeatedly was denied by the Department for hearing.

The proponent claimed that the rate now employed under location adjustments is clearly outdated. Proponent introduced an exhibit into the record to show that distributing plant handlers, on average, are presently paying 72 percent of the cost of hauling milk from supplying plants to their bottling operations. However, proponent also showed that when the proposed $.0028 per mile rate was applied, handlers would have to pay an average of only 35 percent of the actual cost of hauling. Thus, he said, CMPC's goal of effectively increasing the rate applicable on all transfers without completely recovering the hauling costs for most fluid handlers would be accomplished.

Proponent testified that present location adjustment provisions were structured on the premise that milk moves from the milkshed in the north to the city of Chicago in the south. Proponent's claim is that milk no longer just moves in a north-south direction but also in south-north and west-east directions because the bottling industry has developed along the eastern side of the marketing area. Proponent added that milk moves in any direction in which it is economically feasible to satisfy the needs of the fluid sector. Therefore, it was their belief that these new provisions should accommodate everyday milk movements.

The proponent also stated that CMPC proposed a lower rate of $.0022 per mile applicable during the period of March through July, in order to discourage milk from moving long distances during the flush. Although transportation costs do not vary seasonally, proponent believes that it is not necessary for the order to provide the same rate for transportation during the period of higher production as it does for the short production months.

Proponent testified that a sequential assignment of transfers would help assure that the transportation credit is not abused. Such a change, he said, would encourage transfers from pool plants located the shortest distance from the receiving plant.

NFO and FUMMC both opposed CMPC's transportation credit proposal. Their spokesmen concurred that such credit is not advisable because it would take money out of the pool, thereby decreasing the blend price. Also, it was their view that a south to north shipment is inefficient and uneconomic. FUMMC added that the transportation credit would encourage less efficient milk movements. Taking into account that the haul of direct-shipped milk is highly subsidized by bottlers, FUMMC believes that the extra credit to handlers would be more than enough to get them to switch from direct to transfer milk.

In support of its proposal for payment from the Order 30 pool for an assembly credit, a CMPC spokesman claimed that the cost of supplying milk to distributing plants is not borne evenly by all pool supply plants or their associated producers. Proponent stated that although 40 percent of all the milk needed by bottling plants is received by way of transfer, i.e., roughly 116 million pounds per month, only some supply plants actually meet these needs while others realize manufacturing margins from retained milk. Yet, he added, all draw equally from the pool money generated by the Class I value of milk supplied by the performing plants.

The spokesman stated that the assembly credit which they proposed fits the description of a marketwide service benefit. As proponent took note in it statement from the Department's earlier decision which dealt with this same issue, the entire market benefits from market balancing activities performed by certain handlers; therefore, all producers should share in the cost of providing these services.

In its brief, proponent pointed to statistics presented at the hearing to show the contrast between those who perform for the fluid market and those that do not. Proponent showed that during the period of September 1986–April 1987, CMPC member plant shipments to distributing plants averaged 38 percent of monthly receipts. On the other hand, for the period August 1984–January 1985, there were 66 pool supply and reserve supply plants that shipped less than 5 percent of their producer receipts.

Proponent stated that the assembly credit rate proposed would only provide partial compensation. This is so, he said, because CMPC did not want the Federal order to be an establisher of rates. In its brief, CMPC added that the rate proposed is constant over all 16 zones because this added incentive is needed to move milk from supply plants to distributing plants irrespective of the zone in which the bottler is located. Proponent acknowledged that the Chicago metroplitan area exhibits the greatest deficit of producer milk production in relaton to consumer demand. However, CMPC holds the view that there is a demand for milk at bottling plants located in farther-out zones that may be shipping packaged milk into the Chicago area to meet consumer demands for fluid milk. Proponent added that the distributing plants in the outer zones face steep competition with the manufacturing plants for their milk supplies.

One final point of the proponent was that the credit would apply only on actual shipments to pool distributing plants because of the fact that retained milk realizes marketing margins. It would, however, apply on the entire shipment regardless of the use made of it by the bottling handler. Otherwise, according to proponent, shipping handlers would request (but not all would get) Class I status for the milk that they transfer to bottlers.

Alto-Golden Guernsey (AGG), a member of CMPC which operates three reserve supply plants and two distributing plants regulated under Order 30, gave a minority statement regarding who should be entitled to the assembly credit. It was AGG's view that milk shipments from any pool plant to a distributing plant should entitle the transferor, whether supply plant or another distributing plant, to the credit. This is consistent, a spokesman said, with the current location adjustment provisions and the CMPC proposed transportation credit, which allow distributing plants a credit on receipts of milk from any pool plant.

NFO, FUMMC, TAPP, and WCMA all opposed the assembly credit proposal because they believe such costs should be paid through over-order charges by the handlers who receive the milk. NFO added that the proposed rate may be set at a point where some supply plants would cover all operational costs because they believe that efficient reloads can operate at the 8 cent per hundredweight level or less.

In support of its proposed direct-delivery differentials, the CMPC spokesman stated that such payments

would help preserve the direct-shipped milk and divert-transfer milk that currently moves to fluid handlers. The proponent claimed that direct farm to distributing plant type of shipments supply a monthly average of 173 million pounds or 60 percent of the milk needed each month at the bottling plants, with 81 million pounds being direct-shipped milk and 92 million pounds being divert-transfer milk. These milk movements, he said, are the most efficient and should be encouraged.

Proponent testified that the differentials should apply on the entire shipment to a distributing plant, because to limit it to anything less could result in producers receiving varying values based on handlers' Class I utilizations. In addition, CMPC, in its brief, claimed that the Food Security Act of 1985 specifically provides for such payments out of pool funds irrespective of the use classification of such milk. CMPC also stated that to limit the credit based on a plant's Class I utilization clearly would violate the marketwide pooling requirement of the Act, and in effect, create an individual-handler pool. It was CMPC's opinion that any such proposal would lead to producers switching to the plants with highest utilization. This is turn would cause those plants with relatively lower utilization to match the extra payment to retain supplies, and thus, costs would increase. CMPC added that limiting the credit based on a plant's Class I utilization would also lead to producers shipping milk farther distances to get to the highest utilization plants, at least further than necessary to derive the benefit that would be secured by CMPC's proposal.

Southland and Kraft, co-proponents of a proposal which basically modifies the CMPC assembly credit and direct-delivery differential proposals, each operate in the Chicago Regional market. Southland has one and Kraft five regulated reserve supply plants. A spokesman for Southland and Kraft claimed that such modifications are necessary because as proposed, the CMPC assembly credit and direct-delivery differential proposals would both create an unfair price difference between competing handlers and give special incentives for moving milk to distributing plants located in areas of high milk production when not needed.

The spokesman, referring to a 1977 decision of the Secretary to amend the Chicago Regional order, pointed out that it has been Department policy to promote a more equitable and competitive basis between a handler with Class I and II products produced in one plant and a handler with these same products produced in separate, specialized plants. However, he stated that CMPC's proposal, if not modified, would result in distributing plants with other than Class I products having an advantage over supply plants that produce like Class II or III products. This is so, he said, because producers or handlers who ship to any distributing plant would collect the 6 or 8 cents per hundredweight on the entire load no matter what class-use was made of it, whereas if they were to ship milk to any supply plant, they would not receive extra monies from the pool even if such shipment was directed for Class I use.

He added that such a proposition ignores the basic rationale for marketwide service payments of supplying the Class I needs of the market. Also, he said, it creates an incentive to couple Class II and III operations with Class I operations.

In its brief, Kraft claimed that the Southland and Kraft proposal would more effectively achieve the intent espoused by CMPC (i.e., meeting the fluid needs of the market) and would avoid inequities between Class II handlers. However, in its brief, Southland alone took the revised stance that the assembly credit and direct-delivery differential be provided for milk moved to plants for both Class I and Class II uses in order to maintain competitive equity among handlers producing like products. Kraft stood firm in its view that it is inappropriate to provide credits for milk shipments used to produce Class II products.

It was Southland and Kraft's view that prior to deciding which direct-delivery differential proposal had merit, the Secretary would have to answer the question of whether or not either proposal is authorized by the Act because both cause unequal payments to producers for milk delivered to similarly situated plants, depending upon the utilization or status of the plant. Southland and Kraft pointed out that under the CMPC proposal, producers delivering milk directly to a distributing plant would be eligible to receive a credit, while producers deliverying to a neighboring supply plant, at the same location, would not be eligible for such additional compensation. In addition, under their own proposal, the amount of credit passed on by handlers to producers would vary, depending on the Class I utilization of the plant.

In support of their proposal to gradually reduce the assembly credit and direct-delivery differential to zero in the outer zones, the Southland and Kraft spokesman claimed that it would provide an incentive for producers and shipping plants to supply the fluid needs of Class I handlers in the milk-deficient zones of the market. Outside of Zones 1 and 2, he said, there is sufficient milk to meet the consumer fluid milk demands. Southland and Kraft introduced an exhibit into the record to show that the Chicago area was milk-deficient relative to consumer demand, having to reach out 90 miles to meet that demand. Two other consumption centers of the market shown on the exhibit, Madison and Milwaukee, Wisconsin, had sufficient milk production in their own and surrounding counties. Therefore, Southland and Kraft believes that the credits are acceptable incentives for the Chicago area, specifically Zones 1 and 2, and that they compensate for the hauling shortfall built into the present location adjustment system, but elsewhere in the market they are not acceptable. The spokesman added that in other markets, direct-delivery differentials are given on milk deliveries to bottlers located in the major consumption area, not in the milkshed.

One other point put forth by the spokesman was that the assembly credit should be decreased in direct relationship to the need for assembled milk. If a bottler is located in a sea of milk, then the handler's milk supply should be obtained by direct-delivery; there should be no encouragement to pass through a supply plant before delivering it to plants so situated. However, for plants located in Chicago, he said, running the milk through a reload from some supply areas may be the most efficient system.

In its brief, Southland took the revised stance that year-round, the assembly credit and the direct-delivery differentials should be 8 cents per hundredweight for plants in Zones 1 and 2, 7 cents for Zones 3 and 4, and 6 cents for the remaining zones. Citing several marketing facts brought out at the hearing, such as distributing plants are located throughout the 16-zone area and that these plants currently receive milk by transfer, including the plants in Zones 8 through 16, Southland stated that while the need for assembling and transferring milk may not be as great in some parts of the market as others, it is an important part of milk procurement throughout the Order 30 region.

Kraft, in its brief, stood firm that these payments should only apply to shipments to the inner zones of the market where milk supplies are short and the need for milk is greatest. Furthermore, Kraft stated that CMPC's proposals would reward those who made close-by shipments the same as

those who moved their milk relatively longer distances. Therefore, Kraft holds the view that under such a scheme, shipments to bottlers in the milkshed would be preferred since one would reap the same reward at less expense. Kraft added that if the credits are allowed on shipments to bottlers in the milkshed, then inefficient transfers of milk would ensue, in place of direct shipments, so that plant operators could take advantage of all the new credits.

As stated, Dean, a major milk handler in the Chicago Regional market with three distributing plants, two reserve supply plants, and one supply plant regulated under Order 30, withdrew as a co-proponent of alternative proposals and gave its support to CMPC's proposals. In its brief, Dean stated that the assembly credit and direct-delivery differentials should apply towards an entire shipment, not just the portion used in Class I, because operators of supply plants and producers ship to bottlers believing that their milk will be used in Class I products. The cost over the entire load is the same, Dean said, no matter what its ultimate use is at the plant. Therefore, they should not be deprived the extra monies when a distributing plant handler decides to use only part or none of the load in the bottle. Dean warned that a handler who owns both a bottling and shipping plant could decide to assign all Class I to its own shipments, which, Dean believes, would not be in the best interest of orderly marketing. One other outcome, Dean stated, could be that the shippers, either plant operators or producers, would ssek out the higher Class I use bottlers and avoid those with relatively low Class I use.

Dean also stated opposition to the decreasing payment by zone proposed by Southland and Kraft, contending that milk delivered to a plant in Green Bay (Zone 12) is equally valuable to the fluid market as that delivered to plant in Milwaukee (Zone 4) or Chicago (Zone 1).

Although they favored the Southland and Kraft direct-delivery differential proposal inasfar as it limits such payments to the Class I use at the receiving plant, NFO and FUMMC opposed the decreasing rate schedule because they believe that distributing plants located beyond Zone 2 also serve the fluid needs of the milk-deficient Chicago area. In their opinion it is equally important that all bottling plants be granted identical differentials in order to draw milk to them.

TAPP and WCMA both opposed any form of direct-delivery differentials because in their view, such payment, especially to plants located beyond Zone 6, would be disruptive to orderly marketing. This is so, they said, because direct-delivery differentials would give bottling plants a 6 or 8 cent competitive advantage over proprietary manufacturing plants located in the same area. Such proposals, they said, would undermine the manufacturing segment of the dairy industry. They added that the Southland and Kraft modification, i.e., payment on the Class I portion of a shipment, would undermine the marketwide concept of pooling. One further point raised was that the direct-delivery differentials proposed may not even be authorized by the Food Security Act of 1985, which allows for payment from the pool to handlers, not to producers.

a. *Transportation Credits.* The order should provide transportation credits at the rate of .28 cents per mile per hundredweight to pool distributing plant operators for the Class I portion of bulk milk received by transfer from other pool plants. The volume of such transfers on which the transportation credit would be allowed would be determined on the same basis that location adjustment credits are determined for Class I milk from pool plants. The transportation credits would thus be assigned pro rata to Class I receipts from each pool plant multiplied by 110 percent. The transportation credits would be based on the distance between the distributing plant and the shipping pool plant, as determined by the market administrator, and would be applicable to movements of milk in any direction.

Supply plants are a major source of milk for distributing plants in the Chicago order. In 1986, actual transfers of milk from supply plants and reserve supply plants to pool distributing plants averaged bout 116 million pounds per month, varying from less than 100 million pounds in June and July to about 145 million pounds in October and November. In 1986, 40.2 per cent of the total raw milk physically received at distributing plants was received by transfer from supply plants and reserve supply plants.

In the Chicago market, the distributing plant operator pays the cost of hauling to the distributing plant milk purchased from a supply plant. The distributing plant operator receives any allowable Class I location adjustment under the order on Class I milk at the shipping plant zone. In contrast, milk that a distributing plant receives directly from dairy farms is accounted for at the order prices applicable for the zone where the plant is located. If authorized by the producer, the handler may deduct from payments to a producer the cost of hauling milk from the farm to the plant. Accordingly, if the hauling deduction is made, the handler's lowest cost source of milk should be milk that is recieved directly from producers.

The order provides a location adjustment to the Class I price for milk obtained from a plant located in a zone more distant from Chicago than the distributing plant. This pricing system is intended to recognize the cost of moving milk toward the major population center in the market, Chicago. However, the location adjustment rate of 2.3 cents per hundredweight per 15 miles provided in the order (equal to 1.5 cents per hundredweight per 10 miles) no longer adequately reflects actual hauling costs for moving milk from one plant to another plant. Thus, the additional cost not covered by the order for transferring milk from another pool plant to a distributing plant creates an inequity at a given location between handlers who receive milk via other plant transfers and those who receive milk by direct shipments from the farms of producers. Where there may not be adequate supplies of direct-shipped milk to meet the Class I needs of distributing plants, plants that rely on supply plant milk have some competitive disadvantage compared to those plants that are able to meet their needs with direct-shipped milk.

In addition to the inadequacy of the location adjustment rate provided in the order, the very nature of the market tends not to encourage the movement of milk to distributing plants for Class I uses because manufacturing plants are located throughout the marketing area and provide strong competition for producer milk supplies. The result is that distrubuting plants have difficulty attracting adequate milk supplies at prices that allow them to be competitive with handlers under other nearby orders.

It is not the purpose of the Federal milk marketing order program to arrange for a supply of milk for any milk plant, or to find an outlet for any supply of milk. However, contrary to views expressed by opponents at the hearing, a major purpose of the order program is to assure an adequate supply of pure and wholesome milk for the fluid market and to establish and maintain orderly marketing conditions. This includes adopting order provisions to facilitate securing adequate supplies of milk to meet the market's fluid milk needs. The record shows that obtaining adequate milk for those needs is not being accomplished in an orderly and equitable fashion under the current order provisions.

Conceptually, there are more ways than one to approach this problem. One way would be to increase the Class I price level and increase the location adjustment rate under the Chicago order. While this would encourage more milk to move to fluid milk plants, it would also create misalignment of prices with other nearby orders. Since the Chicago price would be too high relative to the other orders, fluid milk handlers would be placed in an unfavorable competitive position and could lose sales to handlers regulated under other orders. Moreover, a higher Class I price would be difficult, if not impossible, to justify given the current supply-demand situation in the Chicago market where the Class I utilization level averages about 20 percent annually.

Another way to encourage milk to move to the market for Class I use would be to simply provide a steeper slope to the location adjustments of the Class I and unform prices. However, this approach also would create price alignment problems which could result in a competitive advantage for Chicago area handlers relative to other orders. This, too, would not be an acceptable solution.

Because of the existence of these price alignment constraints, the cooperatives that make up CMPC have implemented a system outside the order to deal with a portion of the transportation costs of moving milk between plants. Now that the Agricultural Marketing Agreement Act (the Act) has been amended to permit payments to handlers out of pooled producer returns for services of marketwide benefit, CMPC is proposing that the order do what CMPS has attempted to do outside the order, namely, reimburse handlers of Class I milk for a portion of the cost of obtaining milk from supply plants.

The concept of using pool funds to facilitate the movement of milk from supply plants and other pool plants to distributing plants was widely supported at the hearing. However, two cooperatives, FUMMC and NFO, opposed the concept. Their position was that no provision should be adopted that would take money from producers to pay handlers for providing services that benefit primarily the handlers. This position is noted. However, the Act provides that such payments may be made.

Specifically, in section 608c(5)(J)(iii) of the Act, Congress has delineated "transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification * * *." as a service of marketwide benefit. Congress also indicated that any program of paying handlers for performing marketwide services must meet the requirements of the Act.

The transportation credit provisions adopted in this decision meet the requirements set forth in the statute. The market as a whole benefits from having the fluid milk market adequately supplied in a manner that promotes orderliness in the marketplace. The transportation credits will tend to promote the orderly marketing of milk by encouraging supply plants and other pool plants to make milk available to distributing plants for Class I use.

Distributing plants are located throughout the market. Some are situated with plentiful supplies of raw milk nearby. Others are located more distant from milk supplies. However, a principal characteristic of the Chicago market is that manufacturing plants also are located throughout the milkshed, thus providing intense competition for milk supplies. In this situation, it is essential to orderly marketing that the order recognize more fully the costs of transporting milk.

The current order has location adjustment provisions that recognize a portion of the costs of transporting milk. Through the operation of marketwide pooling, that portion of the hauling costs covered by the location adjustments is shared by all producers. However, as noted earlier in this decision, the location adjustment provisions no longer adequately reflect current hauling costs. Thus, handlers who pay for transporting for milk between plants incur a greater cost than is recognized by the order. Those handlers who incur such additional hauling costs have higher costs than other handlers who do not receive milk from other plants. Moreover, the additional hauling costs, which are not reflected in the order's blend prices, are not shared by all the producers who enjoy the blend prices that results from marketwide pooling. However, as indicated earlier, full recognition of hauling costs in the location adjustment provisions is not a practicable means of dealing with this problem.

The transportation credits provided herein will promote orderly marketing through provisions that are fully consistent with the intent and purposes of the Act. The operation of the credits will improve equity among competing fluid milk handlers by reimbursing a protion of the additional costs incurred when such handlers must reach out to other plans to obtain milk for Class I uses. On the other hand, the costs of such reimbursement will be spread out among all of the market's producers. Thus, all producers who share in the benefits of the higher returns of the fluid market through marketwide pooling will share also the costs of servicing the fluid milk sector of the market on a more equitable basis.

CMPC's proposal would have varied the per-mile hundredweight rate from .28 cents for September through February to .22 cents for March through August. The purpose behind the seasonal variation was that during the surplus production season milk moves to distributing plants from significantly shorter distances than it does during the short production season. CMPC was concerned that a constant rate could encourage distant shipments when not needed and thus further reduce the blend price unnecessarily.

Proponents introduced exhibits showing actual hauling costs paid by distributing plant operators during May, October, November, and December 1986 for plant-to-plant shipments of milk. These data, covering shipments ranging from one mile to 393 miles, indicate an overall average hauling rate of about .42 cents per mile-per hundredweight, although there was a wide range in the hauling rates paid. CMPC chose to propose two-thirds of the average hauling cost to yield a transportation credit rate of .28 cents in the fall months in order to not provide total recovery of hauling cost. Similarly, they proposed 80 percent of the fall rate for the flush production months.

The .28 cents per mile-per hundredweight rate is reasonable and should be adopted as the maximum transportation credit for all months. There is no basis in the record for concluding that hauling rates in the flush production season are 80 percent of short-season rates.

The transportation credits should be applied pro rata to receipts of milk from pool plants. This procedure will conform to the way location adjustments are applied. Since the transportation credits are intended to supplement the location adjustments, it is consistent to follow the same procedures for both provisions.

As proposed, the transportation credits should be applicable to plant-to-milk shipments that move in any direction. The market's principal direction of milk movements is from north to south and northwest to southeast, that is, from the production areas to the principal population center, the Chicago area, which is located in the southeast corner of the marketing area. However, other major population areas, such as Milwaukee and Green Bay, Wisconsin, are along the western shore of Lake Michigan, which forms the

eastern boundary of the marketing area. The record demonstrates that in certain cases shipments of milk from west to east and south to north are feasible and economically practicable. However, the order's location adjustments apply only to shipments that move in the traditional north to south or northwest to southeast direction. Thus, there is no incentive under the order's price structure to move milk supplies in those directions for which there are no location adjustments. The current location adjustment provisions would not be changed by this decision.

There was no specific opposition to the proposed application of transportation credits to milk movements as just described. However, the brief filed on behalf of Kraft urged that the transportation credits apply only to shipments that originate from plants located more than 60 miles from the distributing plant. The purpose of such a limitation would be to encourage primarily the longer distance shipments to distributing plants located in zones one through four. It is clear that these plants do not have sufficient supplies of milk nearby and must depend to a great degree on supply plant milk for their supplies. Also, according to the brief, such a limitation on the application of the transportation credits would discourage distributing plant operators from reaching out to distant supply plants for milk when direct-shipped milk is available from nearby farms.

A similar view was expressed in the brief filed by TAPP, which proposed several restrictions on allowing distributing plants to receive transportation credits. The brief urged that transportation credits only apply to:

1. Class I use, including inventory and shrinkage;

2. Necessary supplemental milk from supply plants; the credits should not apply if the distributing plant has an adequate supply of direct-shipped milk or if the distributing plant shifts milk available by direct shipment to other plants.

Similarly, distributing plants should not receive hauling credits in excess of those applicable to receipts from its own closest supply plants.

The concerns addressed in the briefs filed by Kraft and TAPP should be adequately addressed under the safeguard adopted herein. That is, the less than total coverage of hauling costs by the credits should discourage bypassing locally available supplies in order to obtain credits by receiving milk from more distant plants. Moreover, it would be administratively burdensome to make some of the determinations that would be required to carry out the intent of some of the restrictions called for in TAPP's brief.

As adopted the transportation credits and the current location adjustment provisions will be complementary. The maximum total credit (the transportation credit and the location adjustment combined) on any shipment of milk will be the amount determined by multiplying the .28 cents per mile-per hundredweight rate by the distance between the shipping and receiving plants. Such distance would be determined by the market administrator on the same basis that distances between plants are determined under the current location adjustment provisions of the order. If milk moves in a direction such that a location adjustment covers part of the transportation cost, the location adjustment would apply and the transportation credit would be reduced by the amount of the transportation costs covered by the location adjustment. However, if the location adjustment does not cover any of the transfer cost, the full transportation credit would be allowed. This will carry out the intent that credits apply to milk movements in any direction, but that total compensation not cover the entire hauling cost.

b. *Assembly Credits.* The order also should provide an assembly credit to pool plant operators on milk they assembly and ship to distributing plants for Class I use. Like the transportation credits, the assembly credits would be deducted from the pooled value of milk before computation of the uniform price and would be credited against the supplying handler's pool obligation. The rate for the credit should be eight cents per hundredweight.

The Act, in 608c(5)(J)(i), delineates "providing facilities to furnish additional supplies of milk needed by handlers * * *" as a service of marketwide benefit. The operation of supply plant facilities is a service of marketwide benefit because it is a function involved in moving milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification. Before milk can be transported from a supply plant to a distributing plant, it must be assembled, and perhaps cooled and stored, then reloaded onto a truck. The costs incurred in performing these functions are not currently recognized in the order.

Since servicing the Class I milk needs of fluid milk handlers is recognized as a service of marketwide benefit, it is appropriate that all producers share in the cost of providing that service. This will be realized by providing an assembly credit, and it is consistent with a major purpose of the Act to assure an adequate supply of pure and wholesome milk for the fluid market and to maintain orderly marketing conditions.

The assembly credit as adopted differs from CMPC's proposal in that the eight cents per hundredweight rate would be applicable each month, rather than varying seasonally, and would be based on transfers assigned to Class I use of the receiving plant. The assembly credit recognizes that there are certain costs associated with the process of assembling and shipping milk to distributing plants. These costs are in addition to the hauling costs that are incurred when milk is shipped from a supply plant to a distributing plant and which will be recovered in part through the transportation credits as discussed elsewhere in this decision.

CMPC proposed that an assembly credit be provided at eight cents per hundredweight for the months of August through February and six centers per hundredweight in the remaining months.

In order to develop a cost basis for the assembly credit, CMPC conducted a detailed survey of the costs incurred in operating 10 reload plants that are totally dedicated to serving the fluid milk market. It was CMPC's view that the mixed operations of manufacturing plants precluded the isolation and determination of the basic costs of assembling Grade A milk for shipment to the fluid market from such plants.

The survey of costs of the 10 reloads yielded a weighted average costs of operation of 12.79 cents per hundredweight, comprised of both fixed and variable costs, for the months of September 1985 through August 1986. A summary of the costs were presented in exhibit number 35 and need not be set out herein in detail. During the 12-month period, the total volume of milk handled through the reloads each month varied from just under 100 million pounds to more than 123 million pounds. The reloads were operated by cooperative associations and proprietary handlers.

It is apparent from data provided in exhibits that the milk received at the 10 reloads included in the detailed cost survey represents a substantial portion of the milk that is transferred to distributing plants from supply plants and reserve supply plants. For example, in Janaury 1986, the 10 reloads had producer milk receipts of 108.3 million pounds. In that month, distributing plants received 110.6 million pounds of milk by transfer from supply and reserve supply plants. Thus, the producer milk receipts of the 10 reloads equaled about

98 percent of the amount actually transferred that month. In June 1986, the same computation yields about 78 percent. Thus, it appears that the cost survey represents costs applicable to a vast majority of the milk that moves from supply and reserve supply plants to distributing plants via actual transfer.

The cost data assembled for the reload operations must be viewed as being suitable for the purpose intended here. Although some questions were raised about the cost data, no other data was presented to refute the validity of the costs submitted by CMPC as representative of actual reload operating costs.

The proponents also did not wish to reimburse supply plants for the total costs of assembling milk, yet they wanted to cover much of those costs. So they first multiplied 12.79 cents by 80 percent, which yielded about 10 cents. This was again by 20 percent because there was variation in the costs of operating the various reloads. The end result thus was the eight cents per hundredweight that CMPC proposed for the short production season. The 80 percent was applied again because the use of reloads varied from month-to-month, which yields the six cents per hundredweight that was proposed as the rate for the assembly credits during March through July.

As in the case of the transportation credits, the arguments in favor of seasonally varying the assembly credits are not convincing. The cost data submitted by CMPC does not reveal any particular seasonal pattern. If a seasonal variation were adopted, it should be based on a demonstration that costs actually vary on a seasonal basis. That is not the case here and so the eight cents per hundredweight rate should be applicable each month.

As adopted herein, the assembly credit will be available to any pool plant that receives milk and ships it to a distributing plant. CMPC's proposal would have limited the credit to shipments from supply plants to distributing plants. However, it is more consistent with the structure of the Chicago order to provide the credits for the pro rata share of Class I milk in any pool plant's shipments of bulk milk to a distributing plant. Whether such shipments originate at a supply plant or another distributing plant, the benefit to the market it terms of supplying milk for Class I use is the same.

Similarly, CMPC's proposal to apply the assembly credit to the entire quantity of milk from a supply plant to a distributing plant should not be adopted. Instead, each pool plant that ships milk to a distributing plant should receive a credit based on a pro rata share of the distribution plant's allocation of Class I use. The procedure to be followed would be essentially the same as now applies in determining the total location adjustment allowed a distributing plant when it receives Class I milk from several different sources. As in the case of both the location adjustment and the transportation credit, the basis for establishing the total amount of assembly credits to be allowed would be 110 percent of the distributing plant's total Class I assigned to receipts from other pool plants.

The primary reason, according to CMPC's spokesman, for proposing to allow assembly credits on all milk that is shipped form the supply plant to a distributing plant was to facilitate the billing process between the shipping and receiving handler. Nevertheless, it is more consistent with the concept of recognizing service to the Class I market to restrict the assembly credits to a measure of the receiving plant's Class I use.

c. *Direct-Delivery Differentials.* Proposals to provide separate payment of up to eight cents per hundredweight from pool funds to producers on milk direct-shipped or divert-transferred from farms to distributing plants should not be adopted. Although such payments perhaps would get milk to bottling plants, they would tend to offset what is intended to be accomplished by adoption of the transportation credits and the assembly credit. In addition, the authority for such payments under the marketwide service provisions of the Act is questionable, since the provisions are couched in terms of payments to handlers for services they perform.

Presently, about 60 percent of the milk needed by bottlers is shipped directly from farms, either by direct delivery or divert-transfer, based on data for the period of January-December 1986. Proponent and others at the hearing testified that the minority of milk moves in this manner because it is the most efficient way to get milk to bottlers. Furthermore, it was proponent's belief that payments should be made to producers for direct-shipped milk in order to maintain the present level of efficient shipments in light of their other proposals.

One reason for adopting proponent's other proposals is to alleviate the cost difference between handlers who obtain their milk by transfer and those who receive milk directly from farms. To also grant a per-hundredweight payment to producers on the milk that they direct deliver to bottlers would be a contrary action. Yet, not adopting the direct-delivery differential will not jeopardize these most-efficient shipments because even with adoption of the transportation credits, the recipient of transfer milk will still, on the average, have to pay 35 percent of the shipping cost.

In its brief, Kraft questioned whether such a proposal was authorized under the amended Act. However, in light of the conclusion that the proposal would thwart the other order provisions adopted herein, Kraft's contention need not be addressed.

For the foregoing reasons, all proposals relating to direct-delivery differential payments are denied.

*6. Omission of a Recommended decision and the Opportunity to File Written Exceptions Thereto*

The Food Security Improvements Act of 1986, mandates that the Secretary shall implement a marketwide service program that meets the requirements of the Agricultural Marketing Agreement Act of 1937 not later than 120 days after a hearing is conducted. The Department has determined that the receipt of briefs represents the completion of the hearing conducted by the Administrative Law Judge on the issue and the start of the 120-day timeframe for implementation. Accordingly, any amendatory action taken as a result of the public hearing held in Madison, Wisconsin, on June 2–4 1987, with the briefing date on marketwide service payments issue being July 9, 1987, must have an effective date of no later than November 6, 1987. However, for administrative purposes, November 1 is a preferable effective date.

If the normal rulemaking procedures of issuing a recommended decision and providing time to file exceptions thereto were followed, the amended order could not be made effective by November 1, 1987.

It is therefore found that the due and timely execution 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.

**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 Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified an 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.

**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 Chicago Regional 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 and the two documents annexed hereto be published in the Federal Register.

**Determination of Producer Approval and Representative Period**

June 1987 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 Chicago Regional 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 1030**

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on October 8, 1987.

**Richard E. Lyng,**

*Secretary.*

**Order Amending the Order, Regulating the Handling of Milk in the Chicago Regional Marketing Area**

(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.)

**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 Chicago Regional 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 through 674), 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 effect 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 as 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 Chicago Regional 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:

## PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for CFR Part 1030 continues to read as follows:

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

2. In § 1030.52, paragraph (b) is revised to read as follows:

**§ 1030.52 Plant location adjustments for handlers.**

* * * * *

(b) For the purpose of this section and §§ 1030.55 and 1030.75, the distances to be computed shall be on the basis of the shortest highway mileage as determined by the market administrator—with fractions rounded up to the next whole mile.

(1) The market administrator shall notify each handler of the zone of mileage determination from the city hall in Chicago for each plant and for each handler's pool distributing plant the mileage to each transferor pool plant.

(2) Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination with 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

* * * * *

3. A new § 1030.55 is added to read as follows:

**§ 1030.55 Transfer credits on bulk Class I milk**

(a) For each handler who operates a pool distributing plant (or plants) a transportation credit on milk received from each other pool plant shall be computed by the market administrator as follows, except that paragraph (a)(2) shall not apply when the Class I milk price adjusted for location pursuant to

§ 1030.52(a) is higher at the transferor plant than at the transferee plant:

(1) Multiply the number of hundredweights of the quantities of milk subject to the computations pursuant to § 1030.52(c)(9) and (10) times the product of 0.28 cents times the number of miles between the transferor plant and the transferee plant; and

(2) Subtract an amount computed by multiplying the absolute value difference between the location adjustment rates specified in § 1030.52(a) applicable at the transferee and transferor plants times the hundredweights of milk used in the computation in paragraph (a)(1) of this section. If the amount computed pursuant to this paragraph is greater than the amount computed in paragraph (a)(1) of this section the transportation credit will be zero.

(b) For each handler who transfers milk from a pool plant to a pool distributing plant (or plants) an assembly credit shall be computed by the market administrator at the rate of 8 cents per hundredweight of such handler's transfers of milk included in the computations pursuant to § 1030.52(c) (9) and (10).

4. In § 1030.60, change the reference "§ 1033.44(a)(9)" in paragraph (c) to "§ 1030.44(a)(9)", delete the word "and" at the end of paragraph (f); at the end of paragraph (g) change the period to a semicolon and add the word "and"; and add a new paragraph (h) to read as follows:

**§ 1030.60 Handler's value of milk for computing uniform price.**

* * * * *

(h) Subtract an amount equal to any credits applicable pursuant to § 1030.55.

**Marketing Agreement Regulating the Handling of Milk in the Chicago Regional Marketing Area**

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86, all inclusive, of the order regulating the handling of milk in the Chicago Regional marketing area 7 CFR Part 1030 which is annexed hereto; and

II. The following provisions:

**§ 1030.87 Record of milk handled and authorization to correct typographical errors.**

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of June 1987, hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

**§ 1030.88 Effective date.**

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

[FR Doc. 87-23836 Filed 10-14-87; 8:45 am]
BILLING CODE 3410-02-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Parts 212 and 242

**[INS Number: 1035-87]**

### Detention and Release of Juveniles

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this regulations is to codify Service policy regarding detention and release of juvenile aliens and to provide a single policy for juveniles in both deportation and exclusion proceedings. This regulation will provide consistent servicewide standards and treatment for exclusion and deportation cases.

**DATE:** Comments must be received on or before November 16, 1987.

**ADDRESS:** Please submit written comments in triplicate to the Director of Policy Directives and Instructions, Room 2011, 425 I Street NW., Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Mary Ruth Calhoun, Juvenile Detention Specialist, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4120.

**SUPPLEMENTARY INFORMATION:** The proposed rule adds a new § 242.24 which sets forth Immigration and Naturalization Service policy regarding detention and release of juvenile aliens.

The new section defines "juvenile" as an alien under the age of eighteen (18) years and provides guidelines to the district director regarding the decision to detain or release a juvenile. In addition, the position of "Juvenile Coordinator" is created for the purpose of coordinating family reunification and/or locating suitable placement of juvenile detainees. The regulation also provides a procedure for cases in which the interests of a juvenile are at odds with the wishes of the parents or legal guardian. Finally, the proposed rule would delete the existing text of § 212.5(a)(2)(ii) and would provide in lieu thereof, for the district director or chief patrol agent to consider the factors set forth in § 242.24 in determining whether juveniles detained in accordance with § 235.3(b) or (c) will be paroled out of detention.

In accordance with 5 U.S.C. 605(b) the Commissioner of the Immigration and Naturalization Service certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the definition of section 1(b) of E.O. 12291.

**List of Subjects**

*8 CFR Part 212*

Administrative practice and procedure, Parole, Juveniles.

*8 CFR Part 242*

Administrative practice and procedure, Aliens, Juveniles.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

## PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows and all other authority citations which appear in Part 212 are removed:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, 1182c.

2. Section 212.5(a)(2)(ii) is revised to read as follows:

**§ 212.5 Parole of aliens into the United States.**

(a) * * *

(2) * * *

(ii) Aliens who are defined as juveniles in 8 CFR 242.24. The district director shall follow the guidelines set

forth in § 242.24(b) in determining under what conditions a juvenile should be paroled from detention.

## PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for Part 242 is revised to read as follows and all other authority citations which appear in Part 242 are removed:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1184, 1252, 1254, 1255, 1357, and 1362.

4. A new § 242.24 would be added to read as follows:

### § 242.24 Detention and release of juveniles.

(a) *Juveniles.* A juvenile is defined as an alien under the age of eighteen (18) years.

(b) Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles may be released, in order of preference, to:

(i) A parent;

(ii) Legal guardian;

(iii) Adult relative (brother, sister, aunt, uncle, grandparent);

who is not presently in INS detention.

(2) If an individual specified in paragraph (b)(1) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified an adult relative or legal guardian in INS detention, release of the juvenile and the adult relative or legal guardian shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian in in INS detention or outside the United States, the juvenile may be released to such person as designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraph (b)(1) of this section, who executes an agreement to care for the juvenile's well being and to ensure the juvenile's presence at all future proceedings before the INS or an immigration judge.

(c) The case of a juvenile for whom detention is determined to be necessary should be referred to the "Juvenile Coordinator," located in INS Central Office, whose responsibilities should include but not be limited to, finding suitable placement of the juvenile in a facility designed for the occupancy of juvenile. These may include juvenile facilities contracted by the INS, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) In the case of a juvenile for whom detention is determined to be necessary, for such interm period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by INS authorities or placed in any INS detention facility having separate accommodations for juveniles.

(e) If a parent of a juvenile detained by the INS can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his/her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent, or immigration judge before a custody determination is made.

(f) If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from deportation, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his/her views and assert his/her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Notice and request for disposition.* When a juvenile alien is apprehended, he/she must be given a Notice and Request for Disposition. In the event a juvenile who has requested a hearing pursuant to the Notice decides to accept voluntary departure, a new Notice and Request for Disposition should be given to, and signed by the juvenile.

Date: September 18, 1987.

**Raymond M. Kisor,**

*Associate Commissioner, Enforcement, Immigration and Naturalization Service.*

[FR Doc. 87-23813 Filed 10-14-87; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF THE INTERIOR

## Office of Hearings and Appeals

## 43 CFR Part 4

## Special Rules Applicable to Surface Coal Mining Hearings and Appeals

**AGENCY:** Office of Hearings and Appeals, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule changes the burden of proof as to whether a violation occurred by allocating the ultimate burden of persuasion to the petitioner for review in a civil penalty proceeding under the Surface Mining Control and Reclamation Act of 1977.

**DATE:** Comments on the proposed rule are due November 16, 1987.

**ADDRESS:** Comments may be hand delivered or addressed to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Will A. Irwin, Board of Land Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone: (703) 235-3750.

**SUPPLEMENTARY INFORMATION:** 43 CFR 4.1155, the existing regulation governing the allocation of burdens of proof in a proceeding for administrative review of a civil penalty imposed on a permittee under section 518(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1268(a), provides: "In civil penalty proceedings OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to *the fact of violation* and as to the amount of the penalty." (Emphasis added.) Both the fact of violation and the amount of the penalty may be contested in a civil penalty proceeding because section 518(c) of the Act, 30 U.S.C. 1268(c) provides: "The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account."

A permittee or person with an interest which is or may be adversely affected may also seek administrative review of a notice of violation or cessation order issued under section 521(a) (2) or (3) of the Act, 30 U.S.C. 1271(a) (2) or (3) (or pursuant to a Federal program or Federal lands program), by filing an application for review in accordance with section 525 of the Act, 30 U.S.C.

1275. The regulation governing the allocation of burdens of proof in an application for review proceeding, however, provides that "OSM shall have the burden of going forward to establish a prima facie case as to the validity of the notice or order" but that "[t]he ultimate burden of persuasion shall rest with the applicant for review." 43 CFR 4.1171. It allocates the ultimate burden of persuasion to the applicant for review because "the legislative history clearly states that an applicant for review has the ultimate burden of proof in proceedings to review notices and orders. S. Rep. No. 128, 95th Cong., 1st Sess. 93 (1977)." 43 FR 34381 (Aug. 3, 1978).

The result of the different allocation of the burden of ultimate persuasion as to the fact of the violation in 43 CFR 4.1155 and 4.1171 is not only that the former regulation is inconsistent with congressional intent but also that there are contradictory provisions applicable to the same burden of proof in administrative review proceedings which consolidate an application for review of a notice or order under section 525 with a petition for review of a civil penalty under section 518. (Section 518(b), 30 U.S.C. 1268(b), provides that section 518 hearings shall be consolidated with proceedings resulting from section 521 of the Act when appropriate.)

To correct inconsistency and provide for the same ultimate burden of persuasion as to the fact of a violation in a civil penalty proceeding as in an application for review proceeding, it is proposed to amend 4.1155 to specify that OSM has the burden of going forward to establish a prima facie case as to the fact of a violation and the amount of proposed penalty and the ultimate burden of persuasion as to the amount of the proposed penalty, while the applicant for review has the ultimate burden of persuasion concerning the fact of the violation.

### Determination of Effects

Because this proposed rule merely amends an aspect of administrative review procedures, the Department has determined that the proposed rule is not major, as defined by Exec. Order No. 12291, and 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.*).

### National Environmental Policy Act

The Department has determined that this proposed rule will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

### Paperwork Reduction Act

The proposed rule contains no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3507.

The author of this proposed regulation is Will A. Irwin, Administrative Judge, Board of Land Appeals, Office of Hearings and Appeals.

### List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Penalties, Surface mining.

For the reasons stated in the preamble and under the authority of 30 U.S.C. 1201 *et seq.*, § 4.1155 of Subpart L of Part 4 of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

Dated: September 11, 1987.

**Paul T. Baird,**

*Director.*

## PART 4—[AMENDED]

1. The authority for 43 CFR Subpart L continues to read:

**Authority:** 30 U.S.C. 1256, 1260, 1261, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. Section 4.1155 is revised to read as follows:

**§ 4.1155 Burdens of proof in civil penalty proceedings.**

In civil penalty proceedings, OSM shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

[FR Doc. 87-23854 Filed 10-14-87; 8:45 am]
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# Notices

Federal Register
Vol. 52, No. 199
Thursday, October 15, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Environmental Impact Statement Supplement to the 1981–86 and 1986–90 Operating Plan Environmental Impact Statements for the Alaska Pulp Corporation (formerly Alaska Lumber & Pulp Company)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare supplement to environmental impact statements.

**SUMMARY:** The Forest Service will prepare a supplement to the Environmental Impact Statements (EIS) associated with the 1981–86 and 1986–90 operating periods for the Alaska Pulp Corporation (APC) Long-term Timber Sale Contract. A newsletter and other media sources will be used to notify the public of the scope of the supplement and opportunities for public participation. Those interests in receiving the newsletter are invited to write to the individual listed below and request they be added to the supplement mailing list.

**FOR FURTHER INFORMATION CONTACT:** Information relating to the supplement may be obtained by contacting James Pierce, supplement team leader, Regional Office, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802. Written comments and suggestions may be sent to above listed individual.

**SUPPLEMENTARY INFORMATION:**

#### A. Purpose of Scope of Supplement

This supplement is being prepared to address issues identified in a Federal District Court decision, *City of Tenakee Springs, Southeast Alaska Conservation Council, The Sierra Club, and the Wilderness Society v.* Craig V. Courtright, et al., Civil No. J86–24, Memorandum and Order filed June 25, 1987 (District of Alaska). The lawsuit which led to the court decision challenged the adequacy under the National Environmental Policy Act (NEPA) of the environmental impact statement for the 1981–86 Operating Plan for the APC long-term timber sale contract. The Record of Decision for the 1981–86 Plan, issued April 11, 1980, made available to APC for harvest about 525 million board feet of Tongass National Forest timber, from designated units in varous areas of Baranof, Catherine, Chichagof, and Kuiu Islands. The Record of Decision authorized the roadbuilding and other operations associated with harvesting this timber. Approximately 126 million board feet of sawtimber (154 million board feet with utility logs) remain to be harvested and approximately 119 miles of road remain to be completed to access this timber under the Plan. The June 25, 1987, court decision indicated that supplementation of the 1981–86 Plan EIS was required for the following issues:

1. Changes in implementing the Plan since issuance of the Record of Decision, due to Native Corporation land selection and other actions resulting in deletion or deferral of a substantial number of harvest units from the Plan.

2. Further discussion of a no-action alternative (no further roading or harvest until at least the next 5-year operating plan) specific to each drainage or similar geographic area remaining to be entered for roading and harvest under the Plan, particularly in light of the deletions or deferrals of harvest units in various areas.

3. Further site-specific detail regarding environmental effects of alternate road and harvest configurations in the Upper Game Creek area of Chichagof Island, an area about which plaintiffs alleged particular concern in the lawsuit.

4. Further discussion of cumulative impacts of forseeable roading and timber harvest in the vicinity of Upper Game Creek, and impacts associated with any changes in harvest practices on neighboring lands conveyed to Native Corporations.

The supplement will address these issues and in addition will address other issues of concern to the Plaintiffs in the lawsuit. These issues extend to areas included in the EIS for the 1986–90 Operating Plan for the APC contract, for which a Record of Decision adopting a final alternative for the 1986–90 Plan was issued December 31, 1986. The supplement will therefore extend to the 1986–90 Plan EIS, and will consider whether to modify the Record of Decision for the 1986–90 Plan, as well as the Record of Decision for the 1981–86 Plan, in light of further analysis and discussion of environmental effects in the EIS supplement. The additional issues to be addressed in the supplement in response to plaintiffs' concerns include:

1. Further analysis and discussion of site-specific and cumulative environental impacts associated with alternative road and timber harvest configurations in other areas included in the 1981–86 or 1986–90 Plan which are not expected to be entered prior to completion of the supplement, equivalent to that required by the court decision for Upper Game Creek.

2. Further analysis and discussion regarding effects on subsistence resources and uses in relation to alternatives considered in the supplement, including an evaluation and determination of whether a significant restriction of subsistence uses would result, pursuant to section 810 of the Alaska National Interest Lands Conservation Act.

3. Further analysis and discussion regarding mitigating measures, in relation to the alternatives considered in the supplement. Other issues and alternatives identified during the supplement process may also be addressed.

#### B. Geographic Scope and Interim Activities

The geographic areas upon which the supplement will focus, and in which further roading or timber harvest operations under the APC contract will be deferred until at least completion of the supplement and associated record of decision, are as follows (described by Tongass Land Management Plan Value Comparison Unit (VCU), which conforms to drainage or watershed boundaries generally):

1. VCU 203 (Seagull Creek).

2. Portion of VCU 204, south of the existing road system (Upper Game Creek). (Whether the harvest unit numbered 97 in this VCU is deferred depends on further discussions among the parties to the *Tenakee Springs v. Courtright* lawsuit.)

2. Portion of VCU 216, northwest of the existing road system (Upper Freshwater Creek).

4. VCU 235 (Kadashan; only roading was scheduling as part of 1981–86 and 1986–90 Plans; salvage harvesting of downed right-of-way timber lying across and stacked alongside the already completed portion of the road, as allowed by a June 23, 1987, court order, will not be deferred for the supplement).

5. VCU's 237, 238 (Trap Bay).

6. VCU's 247, 279–281, 283, 285 (Finger Creek, Poison Cove, Ushk Bay, and Patterson Bay, Upper Hoonah Sound).

7. VCU's 416–418 (East Kuiu Island).

8. Portion of VCU's 419, 420 (Port Camden and 3-Mile Arm areas, north of existing and projected roading and harvest shown in the preferred alternative map (alternative J) in the 1986–90 Plan EIS; 3-Mile Arm area, south of the harvest unit numbered 5 depicted in VCU 419 of the preferred alternative map. However, activities in harvest units numbered 8 through 11 and associated roads as depicted in VCU 419 on map 6 for Alternative D in the 1986–90 Plan EIS, and as authorized in the 1986–90 Plan Record of Decision, will not be deferred.)

Roading and harvest will continue on other areas of Chichagof and Kuiu Islands under the 1981–86 and 1986–90 Plans while the supplement is being prepared. Whether and how to proceed with activities presently authorized for these areas under these plans will not be further addressed in the EIS supplement. Completion of such activities will be considered a part of the no-action alternative in the supplement for these areas. Additional roading and harvest in these areas beyond what is included in the presently approved Plans is expected to be considered in the supplement. Further roading and harvest in other areas included in the 1981–86 and 1986–90 EIS study areas, but for which further roading or harvest was deferred in the presently approved operating plans until at least the 1991–96 Plan, such as the Kadashan River drainage, likewise may be considered as alternatives in the supplement.

If further litigation enjoins road or harvest operations under the 1918–86 or 1986–90 Operating Plan in areas not listed for deferral of operations while the supplement is being prepared, then initiation of further operations in one or more areas listed for deferral above, prior to completion of the supplement, may be necessary to meet existing government contract obligations and to avoid undue hardship upon dependent timber industry and communities. The same may be the case if the supplement takes longer to complete than currently projected. The Forest Service hopes no such changes will be necessary. Any such proposed change would be the subject of discussions among at least the parties to the *Tenakee Springs v. Courtright* lawsuit and public notice prior to implementation.

### C. Two Phases of Supplement

The EIS supplement is expected to consist of two phases. These phases may proceed concurrent with one another, but a supplement document for the first phase may be circulated for public comment and completed prior to circulation and completion of one or more supplement documents for the second phase. A draft and a final supplement document or documents will be issued for both phases.

The first phase will address changes in the implementation of the Operating Plan and other circumstances since issuance of the 1981–86 Plan ROD. This phase will address the environmental impacts of relevant changes and their relation to alternatives for each area covered by the supplement. This phase will address generally whether to modify the 1981–86 or 1986–90 Operating Plans regarding roading and harvest in each such area. This phase will tier to the Alaska Regional guide, Tongass Land Management Plan, 1976–81 Plan EIS, 1981–86 Plan EIS, and 1986–90 Plan EIS. It is expected to consider, among other alternatives, increased harvest in the portions of the 1981–86 and 1986–90 Plan EIS study areas where roading or harvest is expected to take place while the supplement is being completed, in order to allow decreased harvest in other portions of the study area. This phase will provide an updated section 810 Alaska National Lands Conservation Act (ANILCA) evaluation and determination, regarding alternatives considered in this phase, for the entire study area.

The second phase will further address site-specific effects of alternatives for each area within the study area in which harvest and roading are not expected to take place during completion of the supplement, except those for which the first phase indicates no further roading or harvest until at least the 1991–96 operating plan is the preferred alternative. The second phase will analyze site-specific effects of alternatives for each such area which the first phase indicates should be entered prior to 1991. With respect to areas where already authorized roading and harvest are expected to continue during preparation of the supplement, the second phase will further address site-specific effects of alternatives for additional roading or harvest in those areas which the first phase indicates additional roading or harvest prior to 1991, beyond that already authorized, is the preferred alternative. The seond phase will consider a no-action alternative in light of site-specific effects, for each such area. It will consider mitigation measures and subsistence impacts, including a section 810 ANILCA evaluation and determination, at the site-specific level. It will tier to the first phase and the EIS's to which the first phase is tiered.

Both phases of the supplement are expected to be completed 12 to 18 months from the date of this Notice of Intent. The projected date for issuance of a draft supplement for the first phase is May 1988. Issuance of a draft supplement document or documents for the areas included in the second phase is scheduled for not later than December 1988, and may be issued concurrently with a first phase draft. The projected date for issuance of a final supplement docment or documents for the first phase and second phase, with an accompanying Record of Decision, is May 1, 1989.

### D. Comments

The comment period of the draft EIS supplement document or documents will be 45 days from the date the Environmental Protection Agency's notice of availability for the document appears in the **Federal Register**. It is very important that those interested in the management of the Tongass National Forest participate during the comment period. To be the most helpful, comments on each supplement document should be as specific as possible and may address the adequacy of the supplement or the merits of the alternatives discussed (see The Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553, 1978, and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement, *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can

meaningfully consider them and respond to them in the final.

After the comment period ends on each draft supplemental document, the comments will be analyzed and considered by the Forest Service in preparing the final supplement document. In the final supplement document, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the supplement document or documents, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Michael A. Barton, Regional Forester of the Alaska Region, located in Juneau, Alaska, is the responsible official.

Date: September 30, 1987.

**Michael A. Barton,**

*Regional Forester.*

[FR Doc. 87-23840 Filed 10-14-87; 8:45 am]

BILLING CODE 3410-11-M

## Intermountain Region; Proposed Fee Schedule for Electronic Communication Sites and Request for Public Review and Comments

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed fee schedule.

**SUMMARY:** The Intermountain Region, administering those National Forests in the States of Nevada, Utah, and portions of California, Colorado, Idaho, and Wyoming, is revising procedures governing determination of rental fees for electronic communication sites. Public review and comment on the proposal are invited. This proposal is based on a market study conducted by the Region during the spring and summer of 1987. The market study and a proposed rental fee schedule are available for review and comment.

**DATE:** Comments on the proposal must be received, in writing, on or before December 14, 1987.

**ADDRESS:** Send comments on the proposal to J.S. Tixier, Regional Forester, Intermountain Region, 324 25th Street, Ogden, UT 84401. Comments received in response to this notice may be reviewed in the office of the Director of Recreation and Lands, Room 6025, Federal Building, 324 25th Street, Ogden, UT during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Frank Elder (801) 625-5150 or Lynn Bidlack (801) 625-5141, Recreation and Lands Staff.

**SUPPLEMENTARY INFORMATION:** The Forest Service administers approximately 1,031 electronic communication site authorizations within the Intermountain Region. The existing policy for determining annual land use rental fees is a mixture of schedule and formula. Fees are based on 0.2 percent of the authorization holder's total investment value for electronic communication facilities and equipment plus 5 percent of the rental income from building tenants and/or equipment users served by the holder. Fees for many holders are currently at levels of $25 to $2,695/year while private land rentals for communication sites are in the $175 to $6,886/year range.

Revised Forest Service National Policy contained in **Federal Register** Vol. 50, page 40574, dated October 4, 1985, established that electronic communication site fees are to be based on the fair market value of the rights and privileges authorized rather than on a percentage of investment value and rental income. This change is consistent with requirements of the Federal Land Policy and Management Act of 1976 and accompanying regulations.

Future fees are to be determined by individual appraisals, competitive bidding, or a fee schedule derived through market analysis. The Intermountain Region has determined a fee schedule would be an appropriate cost-effective method to be used for most electronic communications sites. When appropriate, as determined by the Regional Forester, individual site appraisals or competitive bidding can be used to establish fees on large or unique sites of where a competitive interest exists.

### Proposed Rental Fee Schedule

The proposed rental fee schedule has been prepared based on (1) analysis of market data of similar uses in Arizona, California, Colorado, Idaho, Montana, North Dakota, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming and (2) sound business management principles. The proposed rental fee schedule for the Intermountain Region appears at the end of this notice. The proposed schedule establishes annual rental fees by type of electronic use (as listed in the Definitions section of this notice) and population categories for the Intermountain Region. After implementation, the proposed schedule will be updated annually by application of the Implicit Price Deflator-Gross National Product Index and further updated by periodic market reviews.

### Shared Space

Electronic communication space is frequently shared by several users within an authorized building at a Forest Service administered electronic site. In the private sector, market data shows a very broad range of fees for shared uses: a common fee for second and subsequent users is 50 percent of sublet shared space rentals. Market information also indicates that sublet rentals tend to correlate to category of use, similar to primary use rentals.

Analysis of the market data and consideration of the special limitations and conditions of use of public lands indicate that secondary and subsequent user fees of 50 percent of the full fee for the kind of electronic use are fair and reasonable to electronic site users in this category and to the public. With the implementation of the proposed rental fee schedule, fees for secondary and subsequent users will be established on this basis except in the case of 2-way radio installations (commercial communicators), where specific market data was found as indicated on the proposed rental fee schedule.

Under the proposal, primary users will pay the Forest Service the appropriate shared-service fee for each of their tenants/users, and are free to negotiate a reasonable charge with their tenants.

### Miscellaneous Electronic Uses

A review of Forest Service records discloses a number of authorized electronic uses for which the market analysis provided insufficient information on market rent. Many of these uses involved "receive only" equipment, such as TV and radio receiving antennas, satellite dishes, and other equipment or structures designed solely for the reception of electromagnetic signals. Some miscellaneous uses may involve both transmitting and receiving equipment and structures.

There are comparatively few of these installations in the Intermountain Region. Fair market value of these uses can be established administratively through consideration of sound business management principles as provided in Secretary of Agriculture's Regulation 36 CFR 251.57a. The Intermountain Region, Forest Service, has reviewed available information and the market analysis for other electronic uses as listed in the proposed rental fee schedule and concluded that an appropriate annual fee for various miscellaneous electronic uses not otherwise identified in the

proposed fee schedule is $75 per year per unit. A unit is defined as one receiving antenna, one transmit/receive antenna combination serving one radio, one satellite dish, etc.

The field of electronics is expanding rapidly. Many electronic uses are in developmental stages. The Intermountain Region's proposed rental fee schedule is not intended to include these new and developing uses. Fees will be established on the basis of appraisal, sound business management principles, and/or negotiation when these new and developing uses become operational in the Intermountain Region.

**Proposed Implementation**

Fees proposed according to this schedule will apply to each electronic use on National Forest System lands in the Intermountain Region upon adoption of the final schedule and publication in the **Federal Register.**

For the many cases where more than one user occupies an electronics building on a site, the owner of the building will become the permit holder. The other users of the building, previously also permit holders, will cease to hold permits and will be considered simply as tenants of the permit-holding landlord. The surcharge for tenants of commercial communicator permit holders is shown in the proposed fee schedule. The surcharge for tenants of other permit holders shall be 50 percent of the fee for the use from the schedule for that use (not necessarily the permit holder's use).

Conversion to the new system will occur as the existing authorizations of building owners expire over the next 5 years, or no later than December 31, 1992. As these new authorizations are issued, the authorizations of the other users (tenants) will be terminated.

Under certain qualifying circumstances, as provided by Secretary of Agriculture's Regulations 36 CFR 251.57b and current Forest Service policy, fees may be waived or reduced. These procedures are not affected by the proposed fee schedule.

Copies of this notice and the proposed fee schedule are being mailed to holders of existing communication site authorizations and will also be sent to anyone requesting copies from the contacts listed in this notice. The market study and proposed rental fee schedule are also available for review at Forest Supervisors' Office.

**Definitions**

Following are definitions for the nine categories as listed in the proposed rental fee schedule for the Intermountain Region:

1. *Passive Reflector:* This use involves a passive antenna element or elements, located to reflect radiation from or redirect radiation to a directional transmitting and/or receiving antenna.

2. *Translators, TV or FM Radio:* This use involves the re-transmission of TV or FM broadcast programs and signals without significantly altering any characteristic of the original signal other than its frequency and amplitude. Stations in this category are licensed under Part 74 of the Code of Federal Regulations.

3. *2-way Radio, Site Only:* This use involves operation of 2-way radios for the purpose of internal communications in support of business, community activities, or other organizational objectives. This user occupies the site only and provides his own building and/or tower.

4. *2-way Radio, Site and Building:* This use involves operation of 2-way radios for the purpose of internal communications in support of business, community activities, or other organizational objectives. This user occupies the site and the landowner's (U.S. Government) building.

5. *Industrial Microwave:* This use involves operation of non-common carrier microwave relay applications (such as utility companies) for internal communications and remote monitoring/control. It may also include uses by state agencies.

6. *Cable Television:* This use applies to cable television receiving and retransmission units. Incoming signals may be received by antenna, satellite dish, or microwave. Retransmission/distribution is generally by cable but may be by microwave to another location. References to population pertaining to this use will mean the total estimated number of people that could potentially be served by the system.

7. *Common Carrier Microwave:* This use relays telephone, television, or other signals over point-to-point microwave metworks.

8. *Commercial Communicators:* This use is for companies or individuals which develop electronic sites for use by their customers. They typically rent out vault space in a building and antenna space on a tower. They may sell, rent and service electronic equipment. The most wide-spread use is for 2-way radio repeaters, but this group also includes such uses as microwave mobile telephone systems, answering services, and paging systems. Often the commercial communicators lease the land and construct the improvements. Occasionally, they are able to lease both the land and improvements. Typically, commercial communicators have a radio for their own use and one or more that are rented out on a time-sharing basis to several users. Commercial communicators include National companies as well as small local businesses.

9. *TV and Radio Broadcast:* This use is for electronic users who broadcast audio and/or video signals which are intended for general public reception. It relates only to primary transmitters and not any rebroadcast systems such as translators. User revenues are generated primarily from commercial advertising.

**Intermountain Region—Proposed Rental Schedule**

Date: September 29, 1987.

**T. A. Roederer,**

*Deputy Regional Forester, Resources.*

BILLING CODE 3410-11-M

## INTERMOUNTAIN REGION PROPOSED RENTAL FEE SCHEDULE

| POPULATION CATEGORY | COMMUNICATION FACILITY | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1. Passive Reflector | 2. Translators TV/FM Radio | 3. 2-Way Radio Site Only | 4. 2-Way Radio Site & Bldgs. | 5. Industrial Microwave | 6. Cable Television | 7. Common Carrier Microwave | 8. Commercial Communi-cators | 9. TV & Radio Broadcast |
| 0- 6,000 | 600 | 500 | 600 | 600 | 1100 | 700 | 1600 | 700+200/ radio | 2700 |
| 6- 14,000 | 600 | 700 | 800 | 600 | 1100 | 1400 | 1600 | 700+200/ radio | 2700 |
| 14- 50,000 | 600 | 900 | 1100 | 900 | 1100 | 1400 | 1600 | 1000+250/ radio | 3000 |
| 50-100,000 | 600 | 1200 | 1100 | 900 | 1500 | 2400 | 2000 | 1000+250/ radio | 3300 |
| 100,000 + | 600 | 1200 | 1100 | 900 | 1500 | 2400 | 2000 | 1000+250/ radio | 4000 |

NOTE: Population on this chart refers to the population within a 40-mile radius of the electronic site.

[FR Doc. 87-23841 Filed 10-14-87; 8:45 am]
BILLING CODE 3410-11-C

## Soil Conservation Service

### Tazewell Middle School Critical Area Treatment RC&D Measure, Virginia

**AGENCY:** Soil Conservation Service, USDA.

**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 (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 Tazewell Middle School Critical Area Treatment RC&D Measure, Tazewell, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

**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, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for constructing 600 feet of subsurface drainage, 700 square feet of lined waterway, and seeding of 1.5 acres of eroding school grounds on the campus of Tazewell Middle School, Tazewell, Virginia.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding inter-government review of federal and federally-assisted programs and projects is applicable)

George C. Norris,

*State Conservationist.*

Date: October 8, 1987.

[FR Doc. 87–23797 Filed 10–14–87; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### Endangered and Threatened Species; Sea Turtles

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of receipt of a petition for reconsideration of a rule.

**SUMMARY:** Mr. Lacy H. Thornburg, Attorney General of North Carolina, petitioned the Department of Commerce to amend final regulations concerning shrimp trawling requirements to conserve endangered and threatened sea turtles. Mr. Thornburg petitioned the Department to withdraw and repeal parts of the final regulations pertaining to North Carolina waters not included in the proposed regulations. The petition states, among other things, that addition of these waters constitutes an abuse of agency discretion and violates the notice and comment procedures of the Administrative Procedures Act, 5 U.S.C. 553. The petition has been reviewed and accepted. It is being processed according to procedures established for responding to such petitions.

**DATE:** Written comments concerning the proposed actions will be accepted until November 16, 1987.

**ADDRESS:** Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, NMFS, Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Carter, Office of Protected Resources and Habitat Programs, NMFS, U.S. Department of Commerce, Washington, DC 20235 (202/673–5351).

**SUPPLEMENTARY INFORMATION:**

#### Background

All sea turtles that occur in U.S. waters are listed as endangered or threatened species under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, (ESA). Five of these, the loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*), are found in marine waters from North Carolina through Texas. Based on information provided by observers on shrimp trawlers, NMFS estimates that each year more than 47,000 sea turtles are caught in shrimp trawls; about 11,000 of these die.

In 1978, NMFS began a research program to develop gear or methods to reduce the mortality of sea turtles in shrimp trawls. The program led to the development of a turtle excluder device (TED) which releases 97 percent of the turtles caught in shrimp trawls with no loss of shrimp. Since development of the NMFS TED, other TEDs have been developed and certified for use. NMFS began a formal program in 1983 to encourage shrimp fishermen to use the TED voluntarily. Despite substantial efforts to transfer the technology to the shrimping industry, the voluntary program was not successful because sufficient numbers of TEDs were not used on a regular basis.

On March 2, 1987, NMFS published proposed regulations (52 FR 6179–6199) that would require shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the coast of the Southeastern United States to use approved gear in specified locations and at specified times. Most North Carolina waters were not included in the proposed regulations.

Thousands of comments were received on the proposed regulations. Based on those comments, NMFS made a number of changes, including areas affected and an additional protective measure. On June 29, 1987, NMFS published final regulations (52 FR 24244–24262) requiring shrimp trawlers to use certain protective measures in specified waters at specified times. The final regulations contained requirements for protective measures for sea turtles in North Carolina waters not included in the proposed regulations.

On August 27, 1987, Mr. Lacy H. Thornburg, Attorney General of North Carolina petitioned Mr. Clarence Brown Acting Secretary of the Department of Commerce, to amend the final rules published on June 29, 1987. The petition requested that parts of the regulations dealing with North Carolina waters be withdrawn and repealed. The petition states among other things, that addition of these waters constitutes an abuse of agency discretion and violates the notice and comment procedures of the Administrative Procedures Act, 5 U.S.C. 553.

The petition has been reviewed and accepted by the Department. It is being processed by NMFS according to procedures established for responding to such petitions. These procedures require the agency to nofity the petitioner within

120 days of receipt of a petition as to whether or not the requested rulemaking will be undertaken. A Notice announcing the agency's decision will be published in the Federal Register.

To ensure that there is a complete review of this issue, NMFS is soliciting comments and information from any interested party. All responses should include the party's name, address and any association, institution or business that the party represents.

Dated: October 8, 1987.

**Bill Powell,**

*Executive Director, National Marine Fisheries Service.*

[FR Doc. 87-23835 Filed 10-14-87; 8:45 am]

BILLING CODE 3510-22-M

## International Trade Administration

**[C-351-609]**

## Final Affirmative Countervailing Duty Determination; Certain Forged Steel Crankshafts From Brazil

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts ("CFSC" or "the subject merchandise") as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is determined to be 5.23 percent ad valorem. However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to reflect changes in the Preferential Working-Capital Financing for Exports program. Accordingly, the duty deposit rate is 5.10 percent ad valorem.

However, the Department of Commerce, the Government of Brazil, and the manufacturers, producers, and exporters of CFSC entered into a suspension agreement on July 21, 1987. At the request of the Government of Brazil, we continued the investigation.

Subsequent to this determination, the ITC will determine whether imports of CFSC from Brazil materially injure, or threaten material injury to, a U.S. industry. If that injury determination is affirmative, we shall not issue a countervailing duty order as long as the conditions of the agreement are met. If that injury determination is negative, we will terminate the suspension agreement and our investigation.

**EFFECTIVE DATE:** October 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bradford Ward, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2239 or 377-2786.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of CFSC. For purposes of this investigation, the following programs are found to confer subsidies:

- Income Tax Exemption for Export Earnings;
- Preferential Working-Capital Financing for Exports (including Incentives for Trading Companies); and
- Import Duty and IPI Tax Exemptions Under Decree-Law 1189 of 1971, as amended.

We determine the estimated net subsidy to be 5.23 percent ad valorem. However, we are adjusting the duty deposit rate to reflect a program-wide change in the Preferential Working-Capital Financing for Exports program. Therefore, the duty deposit rate is 5.10 percent ad valorem.

### Case History

The last **Federal Register** publication pertaining to this investigation (*Suspension of Countervailing Duty Investigation: Certain Forged Steel Crankshafts from Brazil* (52 FR 28177, July 28, 1987) contains the case history. Petitioners and respondents filed briefs on the final determination on July 13 and 15, 1987, concurrently with their comments on the suspension agreement. On August 17, 1987, the Government of Brazil requested that this investigation be continued under section 704 (g) of the Act. Therefore, we are required to issue a final determination in this investigation.

There are two known producers in Brazil of CFSC that exported to the United States during the review period. Those producers are Krupp Metalurgica Campo Limpo Ltda. (Krupp) and Sifco S.A. (Sifco). In addition, Brasifco S.A. (Brasifco) is a trading company wholly-owned by Sifco which exported the subject merchandise from Brazil to the United States during the review period. We verfied that Krupp, Sifco, and Brasifco account for substantially all exports of the subject merchandise to the United States.

### Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight of between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127, and 660.7147 of the *Tariff Schedules of the United States, Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

### Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring subsidization (the review period) is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaire, our verfication, and comments received from interested parties, we determine the following:

*I. Programs Determined To Confer Subsidies*

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of CFSC under the following programs:

*A. Income Tax Exemption for Export Earnings*

Under Decree-Laws 1158 and 1721, Brazilian exporters are eligible for an exemption from income tax on a portion of income attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy.

All of the respondent companies used this exemption on their corporate income tax forms filed during the review period. The companies determined their net taxable income and deducted the exemption from that income to lower, or eliminate, their tax liability. We multiplied the value of the exemption by the effective tax rate for each company

and allocated the sum of the benefits over the total value of 1985 exports to calculate an estimated net subsidy of 1.70 percent ad valorem.

*B. Preferential Working-Capital Financing for Exports*

The Carteira do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. During the review period, these loans were provided under Resolution 882, and also under Resolution 950, as amended by Resolution 1009. Under Resolution 643, as amended by Resolutions 883, 950, and 1009, trading companies can obtain export financing identical to that obtained by manufacturers under Resolution 950. Eligibility for this type of financing is determined on the basis of past export performance or an acceptable export plan. During the review period, the maximum level of eligibility for such financing was 20 percent of the adjusted value of exports.

Under Resolutions 882/883, the statutory interest rate on loans was 100 percent of monetary correction, plus up to three percent interest. This rate is below our commercial benchmark for short-term loans, which is the short-term discount rate for accounts receivable in Brazil as published in *Analise/Business Trends* magazine.

On August 21, 1984, Resolution 950 made these loans available from commercial banks at the prevailing market rates, with interest calculated at the time of repayment. Under Resolution 950, as amended by Resolution 1009, the Banco do Brasil pays the lending institution an equalization fee of up to 15 percentage points (after monetary correction). The lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due. Receipt of the equalization fee by the borrower reduces the interest rate on these working capital loans below the commercial rate of interest. Resolution 950 loans are also exempt from the Imposto Sobre Operacoes Financeiras (Tax on Financial Operations, or IOF), a 1.5 percent tax charged on all domestic financial transactions in Brazil.

Since receipt of working capital financing under Resolutions 882/883/950/1009 is contingent upon export performance, and provides funds to borrowers at preferential rates, we determine that this program confers an export subsidy. During the review period, all of the companies had loans outstanding under Resolutions 882 or 883 and 950/1009.

To calculate the benefit from this program, we multiplied the value of those loans on which interest payments were made during the review period by the sum of: (a) The difference between the applicable interest rates and our benchmark, plus (b) the IOF. We then allocated the benefit over the total value of 1985 exports, resulting in an estimated net subsidy of 3.43 percent.

In cases in which program-wide changes have occurred prior to our preliminary determination and where the changes are verifiable, the Department's practice is to adjust the duty deposit rate to correspond more closely to the eventual duty liability. We have verified that companies no longer receive loans under the terms of Resolutions 882 and 883, and that there are no outstanding loans under 882 and 883. Resolution 950 as amended by 1009, the directive currently in force for this financing program, provides for an "equalization fee" against commercial interest rates as described above. Therefore, we calculated a subsidy rate for duty deposit purposes based on the interest rate rebate provided for under Resolution 950/1009 plus the IOF exemption. The methodology used is consistent with that relied upon in our most recent final countervailing duty determination involving Brazil where this program was found to be used, *Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from Brazil* (51 FR 40837, November 10, 1986). We multiplied the maximum percentage amount of financing for which the companies were eligible (20 percent) by the sum of the 15 percent interest rate rebate plus the IOF to arrive at an estimated duty deposit rate of 3.30 percent ad valorem.

*C. Import Duty and IPI Tax Exemptions Under Decree-Law 1189 of 1971*

Our examination of company documents at verification revealed that one respondent company had imported certain items free of the normal import duty and the IPI tax (Imposto Sobre Produtos Industrializados, or Industrialized Products Tax—IPI). These exemptions were granted under a provision of Decree-Law 1189 of 1971, as amended, which allows for the duty- and tax-free importation of certain non-physically incorporated merchandise based on a percentage of a company's increase in exports.

Because these exemptions from import duty and IPI tax are contingent upon export performance, we determine that this program constitutes an export subsidy. In order to calculate the benefit, we divided the total value of import duties and IPI taxes not paid during the review period by the value of all exports during the review period, resulting in an estimated net subsidy of 0.10 percent ad valorem.

*II. Programs Determined Not To Be Used*

We determine, based on verified information, that manufacturers, producers, ro exporters in Brazil of CFSC did not apply for, claim, or receive benefits during the review period under the following programs which were listed in our notice of *Initiation of Countervailing Duty Investigation: Certain Forged Steel Crankshafts from Brazil* (51 FR 40240, November 5, 1986):

A. Export Financing Under the CIC–CREGE 14–11 Circular
B. Resolution 330 of the Banco Central do Brasil
C. The BEFIEX Program
D. The CIEX Program
E. Exemption of IPI Tax and Customs Duties on Imported Capital Equipment (CDI)
F. IPI Rebates for Capital Investment
G. Accelerated Depreciation for Brazilian-Made Capital Equipment
H. The PROEX Program
I. Resolutions 68 and 509 (FINEX) Financing
J. Loans Through the Apoio o Desenvolvimento Tecnologica a Empresa Nacional (ADTEN)
K. Articles 13 and 14 of Decree Law 2303

This decree law was announced in November, 1986, and implementing regulations had not been promulgated as of the date of our verification. We verified that the respondent companies did not use this program on corporate income tax returns filed during the review period. If there is a subsequent administrative review in this investigation, we will investigate any use of this program which may provide countervailable benefits.

*III. Program Determined To Have Been Terminated*

IPI Export Credit Premium

Until May 1, 1985, Brazilian exporters of manufactured products were eligible for a tax credit on the IPI. The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to constitute a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the Government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in

accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice of the Ministry of Finance) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985.

The IPI export credit premium was terminated over one year before the initiation of this investigation and we verified in this case that the companies ceased receiving benefits during the review period. Accordingly, we determine that this program has been terminated, and no benefits under this program are accruing to current exports of CFSC.

Comments

*Comment 1:* Regarding the Income Tax Exemption for Export Earnings program, petitioner argues that the Department should: (a) Not deduct receipts of the IPI export credit premium from the exemption claimed by the respondent companies; (b) use only verified effective income tax rates in our calculations; and (c) allocate the benefit over export sales to calculate the ad valorem subsidy rate. Respondents argue that the Department should: (a) Deduct the IPI export credit premium from the companies' adjusted profits to calculate the benefit from this exemption; (b) use effective rather than nominal tax rates to calculate tax savings; and (c) calculate the ad valorem subsidy rate from this program by dividing benefits over total sales because this exemption is a rebate of an indirect tax which cannot be tied to export sales.

*DOC Position:* Our calculation of the value of the benefit provided by the income tax exemption for export earnings is based on the full amount claimed on the companies' income tax returns filed during the review period. The companies calculated the amount of the exemption by adjusting net sales and multiplying by the ratio of export sales to all sales. Since the net sales value used as a starting point in calculating the exemption includes receipts of the IPI export credit premium, the exemption likewise includes a proportion of that amount. We are not countervailing the receipt of the IPI export credit premium itself but rather the actual benefit accruing to the companies from the use of this income tax exemption, however derived. As this notice and our verification reports make clear, the companies' receipts of the IPI export credit premium are not accruing to current exports of CFSC and have not been included in our subsidy or duty deposit rates.

We have used only the verified effective income tax rate applicable to each company. In past Brazilian countervailing duty investigations, we have verified that companies which make investments to lower their tax rates receive dividends from those investments, and that the ability to make those investments is not limited to a specific enterprise or industry or group thereof. See *Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil,* (51 FR 21961, June 17, 1986). Therefore, when we calculate the subsidy rate from this program, we take into account the 35 percent base tax rate and all appropriate adjustments claimed by the companies, and verified by the Department, to calculate an effective tax rate.

Regarding respondents' other concerns, as we have stated in numerous previous Brazilian cases, when a benefit such as this one is contingent upon exports, that program confers an export subsidy and the benefit is properly allocated over export revenues. See *e.g., Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from Brazil* (51 FR 40837, November 10, 1986) (*Brass Sheet and Strip from Brazil*).

*Comment 2.* Petitioner argues that the verified interest rates for loans under the Preferential Working-Capital Financing for Exports program are lower than those originally submitted to the Department and we should use verified information to value the subsidy from these loans.

*DOC Position.* We agree. Interest rate data provided in the questionnaire response for several loans was discovered to be incorrect at verification. An amended response was filed and our calculations for this determination are based on verified data.

*Comment 3.* Respondents argue that the Department should calculate the country-wide rate for the Preferential Working-Capital Financing for Exports and the Income Tax Exemption for Export Earnings programs by weight-averaging the benefit by each company's exports of the subject merchandise to the United States.

*DOC Position.* We disagree. We have calculated the country-wide rate for these programs using the same methodology we have applied in past Brazilian investigations. When calculating the benefit from general export subsidy programs, such as those at issue, where the benefits are not tied to specific shipments or products, we are not convinced that weight-averaging would more accurately reflect the actual subsidy provided under the programs since all exports can benefit equally. This is the first instance in any of the previous Brazilian countervailing duty investigations in which the Government of Brazil has argued that the calculation of the coutnry-wide rate for these programs should be based on weight-averaging. The Government of Brazil simply states that weight-averaging would result in a lower subsidy rate, and has cited no basis for its argument in the Act, our regulations, or economic analysis.

*Comment 4.* Respondents argue that the Department failed to take into account the program-wide change in the Resolution 882/883/950/1009 financing program. Respondents state that the Department should calculate a duty deposit rate based on the current interest rates in this program, and also that the Department should not include the IOF tax exemption in the benefit rate. Finally, respondents argue that the Department should use historical loan utilization information to calculate the present benefit and use relevant daily or weekly interest rates, rather than an average annual rate, to determine the alternative financing costs.

*DOC Position.* We agree that the duty deposit rate for this program should be based on the most recent program-wide changes, which adjusted the interest rate benefit under Resolution 950, as amended by Resolution 1009, and our determination reflects this.

Regarding the issues of the IOF tax exemption and the appropriate short-term benchmark, we have stated our position in numerous past Brazilian countervailing duty investigations. See, *e.g., Brass Sheet and Strip from Brazil, supra,* and *Final Affirmative Countervailing Duty Determination: Certain Heavy Iron Construction Casting from Brazil* (51 FR 9491, March 19, 1986). Because the IOF tax is charged on all domestic financial transactions, it is appropriate that we include the value of the IOF exemption when calculating the subsidy from this program. Concerning respondents' comments on our short-term benchmark for purposes of the deposit rate, we have valued the benefit on the basis of the 15 percent maximum interest rate differential. We consider these loans to be made on non-preferential terms absent this "equalization fee" (originating from CACEX and passed through to the borrower by the lending bank) and the IOF exemption. Therefore, it is not necessary to calculate a specific

benchmark, since the equalization fee of 15 percent constitutes the difference between the commerical rate and the preferential rate.

With regard to the issue of historical loan utilization, we have based our calculation of the duty deposit rate on the companies' maximum financing eligibility as described above under *Programs Determined To Confer Subsidies.* We have seen in this and past investigations that companies may use less than complete eligibility at times. However, we have also seen eligibility carried over from prior years, eligibility increased during the term of the proposal, and eligibility based on projected exports. In all instances, the maximum eligibility has remained at 20 percent of adjusted exports. Therefore, we consider it appropriate for the calculation of the duty deposit to use the 20 percent maximum eligibility level as an estimate of the companies' potential duty liability.

*Comment 5.* Citing the legislative history of the Trade Agreements Act of 1979 (S. Rep. No. 249, 96th Cong., 1st Sess. 85–86 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 74–75 (1979)), petitioner argues that the duty and tax reductions on capital equipment imports under the CDI program are "nonrecurring" subsidies in the nature of grants which provide ongoing benefits to CFSC currently being produced and exported by the respondent companies. Accordingly, petitioner contends that the Department should: (a) Investigate benefits received under the program over the past 15 years (the generally accepted useful life of capital equipment), and (b) amortize those benefits over that same period consistent with our grant methodology.

Citing *Can-Am Corp. v. United States,* Slip Op. 87–67, C.I.T. (June 4, 1987) and past Department determinations on the CDI program's import duty and IPI tax exemptions, respondents argue that any of these benefits provided to the respondent companies are tax benefits properly expensed in the year of receipt. Accordingly, import duty and IPI tax exemptions provided to the respondent companies outside the review period are irrelevant to this investigation. Respondents also argue that the CDI program is not limited to a specific enterprise or industry, or group thereof, and, therefore, is not countervailable in any case.

*DOC Position.* Given our present understanding of this program, we determine that any duty and tax reductions provided by the CDI program are benefits properly allocated to the year of receipt rather than amortized over time. Accordingly, only benefits from the CDI program received during the review period would be countervailable in this investigation. We found no use of duty or tax reductions under the CDI program during the review period.

The expensing of benefits received under the CDI program is consistent with our past practice for this and similar programs in other cases (*see, e.g., Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil* (49 FR 17988, April 18, 1984)) and is supported by the recent Court of International Trade decision in *Can-Am* (*supra*). The *Can-Am* case upheld the Department's longstanding practice of expensing tax benefits in the year of receipt. The specific tax program in *Can-Am* involved a tax credit received for making capital investments. In the Department's determination involved in that case, we allocated the benefit to the year of receipt rather than allocating it over the useful life of the equipment acquired.

The tax benefits provided under the CDI program, like those at issue in *Can-Am*, were received after a firm made an approved investment in plant and equipment and the firm, not the government, furnished the capital for the total investment. The court in *Can-Am*, faced with the same argument as presented by petitioner in this case, specifically held that there was no "clear legislative requirement" that the Department amortize tax benefits relating to capital equipment purchases. Since the circumstances of the program at issue in *Can-Am* are analogous to those at issue here, that decision supports our determination on the CDI program.

Since we have determined that the CDI program was not used by the respondents in this investigation, we need not address respondents' comments on the question of whether this program is limited to a specific enterprise or industry, or group of enterprises or industries. Further, we note that the respondents provided no documentation pertaining to their argument on the noncounteravailability of the CDI program until long after verification. Therefore, any such information could not have been used in our final determination.

**Verification**

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, and tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determination.

**Administrative Procedures**

We afforded interested parties an opportunity to present information and written views in accordance with 19 CFR 355.34(a). Written views have been received and considered in reaching this final determination.

Subsequent to this determination, the ITC will determine whether imports of CFSC from Brazil materially injure, or threaten material injury to, a U.S. industry. If that injury determination is affirmative, we shall not issue a countervailing duty order as long as the conditions of the suspension agreement are met. If that injury determination is negative, we will terminate the suspension agreement and our investigation.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

**Gilbert B. Kaplan,**

*Acting Assistant Secretary for Import Administration.*

October 8, 1987.

[FR Doc. 87–23891 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–DS–M

## National Oceanic and Atmospheric Administration

### Mid-Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting at the Carousel Hotel, on the Ocean at 118th Street, Ocean City, MD (telephone: 301–524–1000). On October 28, 1987, at 8:30 a.m., the Council will commence discussion of the Summer Flounder Fishery Management Plan, Parts 601, 602, and 603, of the Code of Federal Regulations, as well as discuss other fishery management and administrative matters. The public meeting will adjourn on the afternoon of October 29 but may be lengthened or shortened depending upon progress of the agenda. Also, the Council may go into closed session (not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street,

Room 2115, Dover, DE 19901; telephone (302) 674–2331.

Dated: October 8, 1987.

**Richard H. Schaefer,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 87–23856 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–22–M

## North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries, NOAA, Commerce.

The North Pacific Fishery Management Council's plan team for development of the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (FMP) will convene a public meeting October 14, 1987, at 9 a.m., at the Alaska Regional Office, National Marine Fisheries Service, 709 West Ninth Street, Juneau, AK, to continue work on the draft FMP.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: October 9, 1987.

**Richard H. Schaefer,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 87–23855 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–22–M

## Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Committee is scheduled to convene a public meeting in conjunction with the Council's Technical Advisory Subcommittee, to continue developing specific limited access options for discussion by the Council and the public. The public meeting will convene October 26–27, 1987, at 1 p.m. at the Red Lion Inn, 310 SW. Lincoln Street, Portland, OR, October 26–27, 1987. On October 26 the public meeting will be held in the Multnomah Room and in the Elowah Room on October 27.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Dated: October 8, 1987.

**Richard H. Schaefer,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 87–23857 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

October 13, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 16, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Summary**

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the previously established limits for cotton, wool and man-made fiber textiles and textile products in Categories 310–320 and 610–614, as a group, 300/301, 313, 335, 336/636, 340/640, 342/642, 347/348, 352/652, 359–C, parts of Category 369, 435, 633, 635, 647/648, 659–O, 666, 669–C and 669–P; and to establish limits for newly merged Categories 310/318, 338/339/638/639 and 349/649, produced or manufactured in Mexico and exported during 1987. As a result, the limits for Categories 313 and 335, which are currently filled, will re-open.

**Background**

CITA directives dated November 28, 1986 and April 7, 1987 (51 FR 43960 and 52 FR 12230) established import restraint limits for certain cotton, wool and man-made fiber textiles and textile products, including Categories 310–320 and 610–614, as a group, 300/301, 310, 313, 318, 335, 336/636, 338/339, 340/640, 342/642, 347/348, 352/652, 359–C (coveralls and overalls), 369pt. (shoe uppers), 369pt. (other), 435, 633, 635, 638/639, 647/648, 649, 659–O (other), 666, 669–C (cordage) and 669–P (man-made fiber bags), produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

During consultations held August 16–21, 1987 between the Governments of the United States and the United Mexican States, agreement was reached to further amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, to increase the current designated consultation levels for cotton and man-made fiber textiles and textile products in Categories 310–320 and 610–614, as a group, and individual Categories 300/301, 313, 335, 336/636, 342/642, 342/642, 352/652, 369pt. (shoe uppers), 369pt. (other), 635, 659–0, 666, 669–C, and 669–P; and specific limits for Categories 347/348 and 359–C, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The designated consultation levels for Categories 340/640, 435 and 633, previously a specific limit, and the specific limit for Category 647/648 are being reduced.

Within the fabric group (Categories 310–320 and 610–614, as a group) Categories 310 and 318 are being merged to become Category 310/318. In addition, currently merged Categories 338/339 and 638/639 are being merged to become Category 338/339/638/639 and Categories 349 and 649 are being merged to become Category 349/649. New limits are being established for the newly merged Categories 310/318, 338/339/638/639 and 349/649.

Import restraint limits for the foregoing categories are being amended and established at the designated levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Rgister** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the

categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

The actions taken pursuant to the letter to the Commissioner of Customs are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Arthur Garel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

October 13, 1987.

**Committee for the Implementation of Textile Agreements**

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you November 28, 1986 and April 7, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 16, 1987, the directives of November 28, 1986 and April 7, 1987 are hereby amended to include the following new and amended import restraint limits:

| Category | 12-mo limit [1] |
|---|---|
| 300/301 | 9,750,000 pods. |
| 310–320 and 610–614, as a group. | 35,000,000 sq yds. |
| 313 | 18,000,000 sq yds. |
| 310/318 | 1,000,000 sq yds. |
| 335 | 55,000 doz. |
| 336/636 | 160,000 doz. |
| 338/339/638/639. | 875,000 doz. |
| 340/640 | 290,000 doz. |
| 342/642 | 240,000 doz. |
| 347/348 | 2,000,000 doz. of which not more than 1,200,000 doz. shall be in Category 347 and not more than 1,200,000 doz. shall be in Category 348. |
| 349/649 | 1,200,000 doz. |
| 352/652 | 1,600,00 doz. |
| 359–C [2] | 1,500,000 pods. |
| 369pt.[3] | 1,500,000 pods. |
| 369pt.[4] | 400,000 pods. |
| 435 | 11,000 doz. |
| 633 | 70,000 doz. |
| 635 | 110,000 doz. |
| 647/648 | 1,200,000 doz. of which not more than 636,000 shall be in Category 647 and not more than 636,000 shall be in Category 648. |
| 659–0 [5] | 1,500,000 pods. |
| 666 | 6,000,000 pods. |
| 669–C [6] | 400,000 pods. |
| 669–P [7] | 850,000 pods. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 359–C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[3] In Category 369pt., only TSUSA numbers 386.0410 and 386.5210.

[4] In Category 369pt., all TSUSA numbers except 355.0200, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, 366.2860, 386.0410, 386.5210, 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111.

[5] In Category 659–O, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, 384.9310, 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[6] In Category 669–C, only TSUSA numbers 348.0065, 384.0075, 348.0565 and 348.0575.

[7] In Category 669–P, only TSUSA number 385.5300.

Textile products in Category 349 which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive. Charges to category 349 are 36,968 dozen for the period January 1, 1987 through July 31, 1987. Additional charges will be supplied as they become available.

Textile products in Category 349 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(l)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(l).

Sincerely,

**Arthur Garel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–24058 Filed 10–14–87; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Ada Language Maintenance Panel; Cancellation of; Meeting

**ACTION:** Cancellation of meeting.

**SUMMARY:** The Ada [1] Language Maintenance Panel Meeting which was originally scheduled for October 26, 1987, published in the **Federal Register** on October 6, 1987 (52 FR 37360), has been cancelled.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jackie Rota, Ada Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, telephone (202) 694–0209.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

October 9, 1987.

[FR Doc. 87–23899 Filed 10–14–87; 8:45 am]

BILLING CODE 3810–01–M

### Task Force on Ada 9X; Meeting

**ACTION:** Notice of Meeting.

**SUMMARY:** A meeting of the Task Force on Ada[1] 9X will be held Tuesday, 27 October 1987 from 7:00 p.m. to 10:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

*Purpose:* To continue discussions on the process for developing Ada 9X and to develop recommendations to be forwarded to the Ada Board.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jackie Rota, Ada[1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

**Linda M. Bynum,**

*Alternate Ofc of the Secy of Defense, Federal Register Liaison Office, Department of Defense.*

October 9, 1987.

[FR Doc. 87–23900 Filed 10–14–87; 8:45 am]

BILLING CODE 3810–01–M

### Advisory Committee on Integrated Long-Term Strategy; Meeting

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Advisory Committee on Integrated Long-Term Strategy will meet in closed session on 12–13 November 1987 in the Old Executive Office Building, Washington, DC.

The mission of the Advisory Committee on Integrated Long-Term Strategy is to provide the Secretary of

[1] Ada is a registered trademark of the U.S. Government (Ada Joint Program).

[1] Ada is a registered trademark of the U.S. Government (Ada Joint Program Office).

Defense and the Assistant to the President for National Security Affairs with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war. At this meeting the Committee will hold classified discussions of national security matters dealing with long term strategy and policy

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [U.S.C. App. II, (1982)], it has been determined that this Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly these meetings will be closed to the public.

October 9, 1987.

**Linda Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87–23901 Filed 10–14–87; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Air Force

### USAF Scientific Advisory Board; Meeting

October 7, 1987.

The USAF Scientific Advisory Board Human Systems Division Advisory Group will meet at Brooks AFB, TX, on 18–19 November 1987. The meeting will convene from 8:00 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss the increasing laser threat and the structure of the R&D effort to counter that threat, review control of hazardous waste in weapon system development, evaluate experiments designed to examine operational utility of military man in space, review long range planning concepts, and review investment strategy.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–23795 Filed 10–14–87; 8:45 am]

BILLING CODE 3910–01–M

### USAF Scientific Advisory Board; Meeting

September 28, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will meet at the Pentagon, Washington, DC, on 3–4 November 1987. The meeting will convene from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–23796 Filed 10–14–87; 8:45 am]

BILLING CODE 3910–01–M

## Department of the Army

### Intent To Grant an Exclusive Patent License to Boron Biologicals, Inc.

The Department of the Army announces its intention to grant an exclusive license to Boron Biologicals, Inc., a corporation of the State of North Carolina, having a place of business at 2811 O'Berry Street, Raleigh, NC 27607, under the following United States Patents and Patent Applications: 4,209,510, "Ammonia-Cyanoborane, Sodium Iodide Complex," issued June 24, 1980; 4,312,989, Pharmacologically active Amine-Boranes," issued January 26, 1982; 4,368,194, "Pharmacologically Active Amine-Boranes, Method of Use," issued January 11, 1983; 4,587,359, "Amine-Carbamoylborane Adducts," issued May 6, 1986; 4,647,555, "Esters of Boron Analogues of Amino Acids," issued March 3, 1987; Serial No. 864,612, "Method of Making Boron Analogues," filed May 19, 1986; and Serial No. 882,562, "Pharmacological Active Amine-Carboxyboranes," filed July 7, 1986.

The proposed exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR 404.7. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Intellectual Property Counsel of the Army, Patents, Copyrights, and Trademarks Division, Office of The Judge Advocate General, Department of the Army, 5611 Columbia Pike, Falls Church, VA 22041–5013.

For further information concerning this notice, contact: Lieutenant Colonel William V. Adams, Patents, Copyrights, and Trademarks Division, OTJAG, Attention: JALS–PC, 5611 Columbia Pike, Falls Church, VA 22041–5013, Telephone No. (202) 756–2434/2435.

**John O. Roach, II,**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 87–23811 Filed 10–14–87; 8:45 am]

BILLING CODE 3710–08–M

## Corps of Engineers, Department of the Army

### Coastal Engineering Research Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: November 4–6, 1987.

Place: Savannah Sheraton Resort and Country Club, Savannah, Georgia.

Time: 8:00 a.m. to 5:30 p.m. on November 4; 8:00 a.m. to 5:30 p.m. on November 5; 8:00 a.m. to 12:00 p.m. on November 6.

Theme: Sea Level Rise—Its Implications to Coastal Engineering.

Proposed Agenda: The November 4 session will consist of a discussion of old CERB business, status of recommendations to the Chief of Engineers, status of coastal R&D program, presentations on North Atlantic and South Atlantic Divisions research needs, and overview of Savannah District and a tour briefing.

A field trip to Tybee Island, Fort Pulaski, and the Savannah Tidegate is planned for the afternoon of November 4.

The session on November 5 will consist of several presentations entitled: Results of Beach Repenishment Study; Beach Nourishment—Corps Perspective; Experience with Beach Restoration; Introduction to Sea Level Rise Issue; Implications of Sea Level Rise Report of Marine Board Study; Experiences on a U.S. Coast with Rapid Relative Sea Level Rise; International Experience. The session will also consist of two panel discussions: Predicted Magnitude of Sea Level Rise and Where do we go from here?

On November 6 there will be an open discussion of the theme with both panels, recommendations by members of the Board and selection of date for the next CERB.

This meeting is open to the public; participation by the public is scheduled for 9:10 a.m. on November 6. The public may attend the tour on November 4, but must provide their own transportation.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Dwayne G. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180–0631.

**Dwayne G. Lee,**

*Colonel, Corps of Engineers Executive Secretary.*

[FR Doc. 87–23810 Filed 10–14–87; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Navy

### Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded, (8) The point of contact from whom a copy of the information proposal may be obtained.

**Extension**

Employment in Private Shipyards under Cognizance of Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPS), 0703–0005, NAVSEA 4350–2, NAVSEA 4350/2.

To collect information on employment in private shipyards to make a determination of the capabilities of the shipbuilding industry and its ability to meet the shipbuilding, conversion and repair needs for Navy and Merchant ships. It is collected from firms that build, convert or repair ships.

Businesses or other for profit
Responses 115
Burden hours 11,040

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Manager and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503 and Ms. Pearl Rascoe-Harrison, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 796–0933.

**FOR FURTHER INFORMATION CONTACT:** A copy of the information collection proposal may be obtained from Ms. Maxine Eldridge, Commander, Naval Sea Systems Command, National Center #3, Washington, DC 20360, telephone (202) 692–2064.

**Linda Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

October 9, 1987.

[FR Doc. 87–23989 Filed 10–14–87; 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[Docket No. ERA C&E–87–47; OFP Case No. 56290–9367–20, 21, 22, 22–24]**

### Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Mobil Oil Corp.

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Order granting exemption.

**SUMMARY:** On April 1, 1987, Mobil Oil Corporation (Mobil or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for its refinery located in Paulsboro, New Jersey.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption are found at 10 CFR 503.32.

Pursuant to section 212(a) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

**DATE:** In accordance with section 702(a) of FUA, this order and its provisions shall take effect on December 14, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW, Room GA–093, Washington, DC 20585, Telephone (202) 586–8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue SW, Washington, DC 20585, Telephone (202) 586–6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

**SUPPLEMENTARY INFORMATION:** FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facility located in Paulsboro, New Jersey.

**NEPA Compliance**

After a review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of

section 102(2)(C) of the National Environmental Policy Act (NEPA).

**Procedural Requirements**

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on April 30, 1987 (51 FR 15752), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

Copies of the petition were provided to the Environmental Protection Agency and the Federal Energy Regulatory Commission as required by sections 213(c)(2) and 701(f) of the Act, respectively. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on June 15, 1987; no comments were received and no hearing was requested.

**Order Granting Permanent Exemption**

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(a) of FUA, ERA hereby grants the petitioner's permanent exemption for the unit to be installed at its facility in Paulsboro, New Jersey permitting the use of natural gas or oil as a primary energy source in each unit identified in this order.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on October 6, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-23823 Filed 10-14-87; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket No. G-6355-001, et al.]**

### Conoco Inc., et al., Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

October 9,1987.

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 October 27, 1987, 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 in any proceeding herein must file a petitition 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-6355-001, D, Oct. 1, 1987. | Conoco Inc., P.O. Box 2197, Houston, Texas 77252. | El Paso Natural Gas Company, Arrowhead Field Lea County, New Mexico. | (1) | |
| C162-944-002, D, Oct. 1, 1987. | .....do..... | Arrowhead E-M-E Field, Lea County, New Mexico. | (1) | |
| G-6342-012, D, Oct. 2, 1987. | .....do..... | Monument Area, Lea County, New Mexico. | (1) | |
| CI62-1412-005, D, Sep. 30, 1987. | Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880. | Ringwood Gathering Co., Ringwood Field, Major County, Oklahoma. | (2) | |
| CI62-1412-006, D, Sept. 30, 1987. | .....do..... | .....do..... | (3) | |
| G-5932-002, D, Sept. 30, 1987. | .....do..... | Arkansas Louisiana Gas Co., Athens Field, Claiborne Parish, Louisiana. | (4) | |
| C164-40-001, D, Oct. 2, 1987. | .....do..... | S.E. Custer City Field, Custer County, Oklahoma. | (5) | |
| CI61-1425-004, D, Oct. 2, 1987. | .....do..... | El Paso Natural Gas Company, Jalmat, S. Eunice, Langlie Mattix, *et al.* Fields, Lea County, New Mexico. | (6) | |
| CI72-555-003, D, Oct. 2, 1987. | .....do..... | Panhandle Eastern Pipeline Co., Reydon Area Field, Roger Mills County, Oklahoma. | (7) | |
| CI72-556-003, D, Oct. 2, 1987. | .....do..... | Kansas Nebraska Natural Gas Co., Reydon Area Field, Roger Mills County, Oklahoma. | (7) | |
| CI87-664-000, B, Jun. 1, 1987 [8]. | J.D. Burke, P.O. Box 1336, Corpus Christi, Texas 78403. | United Gas Pipe Line Company, Marshall Field, Goliad County, Texas. | (9) | |

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-904-000, B, Sept. 15, 1987 [10]. | Burlington Bank and Trust Company, Trustee Under Will of H.E. Trovillo, Deceased, c/o Squire, Sanders & Dempsey, P.O. Box 407, Washington, DC 20044. | Colorado Interstate Gas Company, Applegate No. 1 and Applegate No. 1A Wells, Kearney County, Kansas. | ([11]) | |
| CI87-897-000, B, Sept. 10, 1987. | S&J Operating Company, P.O. Box 2249, Wichita Falls, Texas 76307. | Arkla Energy Resources, a division of Arkla, Inc., Vandeveer No. 1 Well, Pittsburg County, Oklahoma. | ([12]) | |
| CI87-898-000, B, Sept. 10, 1987. | .....do..... | ANR Pipeline Company, Dietz No. 1 Well, Woods County, Oklahoma. | ([13]) | |
| CI88-5-000 (G-19085), B, Oct. 5, 1987. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221. | Williams Natural Gas Company, Woodward Field, Woodward County, Oklahoma. | ([14]) | |
| CI88-8-000 (C167-1693), B, Oct. 5, 1987. | Union Texas Petroleum Corp., P.O. Box 2120, Houston, Texas 77252-2120. | Panhandle Eastern Pipe Line Company, Avard Field, Woods County, Oklahoma. | ([15]) | |

FOOTNOTES

[1] Partial Assignment of Operating Rights to Lynx Petroleum Consultants, Inc.

[2] Sun assigned its interest in Property No. 826335, Ellen, to Entex Petroleum, Inc.

[3] Sun assigned its interest in Property No. 864013, National, to Spess Oil Co.

[4] Sun assigned its interest in Property No. 854714, Mance-Lowe Unit; and No. 891714, Lillian Wallace Unit to Getty Oil Co.

[5] Sun assigned its interest in and to the wells located in Sec. 6-T13N-R15W, Custer County, Oklahoma, limited to the Morrow Springer Formation to Gulf Oil Corporation.

[6] Sun assigned its interest in and to the wells located in W/2 Sec. 25-T24S-R36E, below the depth of 5,000 feet, Lea County, New Mexico covered by Operating Agreement described in said Quitclaim and Bill of Sale (B.P. No. 83755/QC) to Exxon Corp. and Shell Western E&P Inc.

[7] Sun assigned its interest in and to the Scrivner No. 1-26 well located in Sec. 26-T14N-R26W, from the surface down to the base of the Morrow Formation in Roger Mills County, Oklahoma covered by Operating Agreement described in said Quitclaim and Bill of Sale (B.P. No. 83601) to Petroleum Equities Corp.

[8] Additional information received 6-25-87 and 10-2-87.

[9] The application was noticed on June 23, 1987 (52 F.R. 23585). However, on October 2, 1987, Applicant requested, in addition to permanent abandonment, pregranted abandonment authorization for a period of three years for sales of released gas in interstate commerce under its small producer certificate issued in Docket No. CS72-723.

[10] Additional information received 10-5-87.

[11] Applicant requests authorization for a limited-term abandonment expiring January 9, 1990, to cover the sale of its interest to Colorado Interstate Gas Company. Applicant also requests authorization for limited-term pregranted abandonment expiring January 9, 1990, of its sales for resale of the released gas in interstate commerce under its small producer certificate issued in Docket No. CS71-340. In support of its application, Applicant states that takes of gas are substantially below contract levels. The deliverability from Applicant's interest is approximately 90 Mcf/day of NGPA section 104 flowing gas (67%) and section 104-Post 1974 gas (33%).

[12] Applicant requests two-year limited-term abandonment with pregranted abandonment. The purchaser cannot purchase the gas due to market constraints. Deliverability is approximately .100 MMcf/d. The gas is NGPA section 104 minimum rate gas. Applicant intends to sell the released volumes to new purchasers.

[13] Applicant requests two-year limited-term abandonment with pregranted abandonment. The purchaser cannot purchase the gas due to market constraints. Deliverability is approximately .130 MMcf/d. The gas is NGPA section 104 minimum rate gas. Applicant intends to sell the released volumes to new purchasers.

[14] The last well in the McCormick Unit was plugged and abandoned in July 1982, and there are no prospects for additional gas sales from this property. Williams Natural Gas Compony and ARCO have agreed to terminate subject contract effective 9-25-84. All other wells subject to the 7-17-59 contract had been plugged and abandoned and the leases associated therewith had lapsed prior to 1979.

[15] The leases dedicated to the contract filed in Docket No. CI67-1693 and designated Union Texas Petroleum Corp.'s FERC Rate Schedule No. 92 were abandoned as non-productive in February 1982. The remaining leases assigned to other parties and were deleted by an FERC Order issued on 7-28-86.

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. 87-23863, Filed 10-14-87; 8:45 am]
BILING CODE 6717-01-M

**[Docket Nos. CP88-2-000, et al.]**

## Northern Natural Gas Co. et al.; Natural Gas Certificate Filings

October 8, 1987.

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

### 1. Northern Natural Gas Company

[Docket No. CP88-2-000]

Take notice that on October 1, 1987, Northern Natural Gas Company, Division of Enron Corp., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-2-000, an application pursuant to section 7(c) of the Natural Gas Act for (1) a blanket certificate for authorization to make sales in interstate commerce for resale of existing natural gas supplies, which are surplus to the current and projected needs of Northern's existing on-system customers to off-system and on-system purchasers including interstate and Hinshaw pipelines and local distribution companies (LDC's), on an interruptible basis, in accordance with the provisions of two new sales rate schedules, Interruptible Sales Service-1 and Interruptible Sales Service-2 (ISS-1 and ISS-2) and (2) blanket authorization to utilize Northern's transmission facilities to effectuate interruptible direct sales to end-users, all as more fully, set forth in the application which is on file with the Commission and open to public inspection.

Northern states that is proposes to charge a negotiated rate for sales under ISS-1 and ISS-2 within a range of rates between a minimum and maximum. It is stated that the maximum rate will be equal to Northern's 100 percent load factor CD-1 Zone 2 rate and the minimum rate will equal Northern's actural weighted average cost of natural gas purchased in the month of delivery plus fuel, variable costs of delivery and GRI and AGA if applicable.

Regarding ISS rate schedule sales to end users, Northern proposes to adopt

the following procedures, Northern shall notify the appropriate State Commission LDC of a potential direct sale fifteen days prior to commencement of service, if such end user is currently served by an LDC as listed in Northern's Directory of Communities Served. It is stated that during this fifteen day period, such LDC will have the ability to protest said proposed sale with the FERC. It is further stated that the FERC shall have thirty days to approve the sale, in light of the protest, or the requested sale shall become subject to a section 7(c) application.

Northern states that sales under ISS–1 and ISS–2 would be made through Northern's existing facilities. Northern further states that the purchaser under ISS–2 would be responsible for all costs of third party transportation.

Northern states that ISS–1 and ISS–2 are essential tools that will allow Northern to purchase natural gas at competitive prices by increasing market diversity and thus retain the merchant function. The increased market diversity, Northern explains, will allow it to purchase supplies at the same competitive prices and terms as non-jurisdictional marketers, improve its overall load factor and therein retain long term supplies, manage market more effectively the supply imbalances that result from customers sales entitlement reductions and/or conversions and serve its seasonal markets at reasonable prices.

Comment date: October 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

**2. National Fuel Gas Supply Corporation**

[Docket No. CP85–608–011]

Take notice that on September 25, 1987, National Fuel Gas Supply Corporation (National) Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85–608–011 a petition to further amend its certificate of public convenience and necessity in this proceeding so as to authorize, for an additional one-year period commencing January 1, 1988, the transportation of up to 66,403 Mcf of natural gas per day on behalf of National Fuel Gas Distribution Corporation (Distribution) for the account of 33 end-user customers, all as more fully set forth in the Appendix hereto and in the application which is on file with the Commission and open to public inspection.

The petition states that National was authorized by Commission order issued December 31, 1986, as amended and modified, to transport up to 60,858 Mcf of natural gas per day on an interruptible basis for Distribution for the account of 33 specified industrial and large commercial customers for a term ending on December 31, 1987. The Appendix hereto provides details for each of the 33 industrial and commercial customers of Distribution for which Distribution seeks an extension of transportation service by National. National states that it would receive the transportation volumes at existing receipt points on its system and deliver the volumes to Distribution at existing points of deliver.

National seeks authorization to continue to provide the transportation service authorized in this proceeding for an additional term of one year commencing January 1, 1988. The petition states that authorization of this extension prior to January 1, 1988, is needed to avert a disruptive suspension of service to the existing transportation customers.

National adds that it would charge Distribution pursuant to its Rate Schedule T–1 which currently provides for a rate of 31.08 cents per Mcf and 2 percent shrinkage.

Comment date: October 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

APPENDIX.—NATIONAL FUEL GAS SUPPLY CORPORATION END USER TRANSPORTATION CUSTOMERS

| End User | Currently authorized maximum volume (MCF/day) | Proposed maximum volume (MCF/day) |
|---|---|---|
| 1. Airco Carbon, St. Marys, PA | 3,300 | 2,950 |
| 2. Airco Carbon, Niagara Falls, NY | 2,500 | 3,500 |
| 3. Altech Specialty Steel, Dunkirk, NY | 2,750 | 2,750 |
| 4. American Brass, Buffalo, NY | 3,000 | 3,000 |
| 5. Angelica Healthcare Service Group, Batavia, NY | 250 | 250 |
| 6. Arcata Graphics, Cheektowaga, NY | 1,325 | 1,500 |
| 7. Bethlehem Steel Corp., Buffalo, NY | 9,000 | 9,500 |
| 8. Chautauqua Hardware Corp., Jamestown, NY | 215 | 215 |
| 9. Darling & Co., Buffalo, NY | 300 | 300 |
| 10. Erie Wastewater Treatment Plant, Erie, PA | 777 | 400 |
| 11. Ferro Corp., Buffalo, NY | 800 | 800 |
| 12. Goodyear Tire & Rubber Co., Niagara Falls, NY | 1,500 | 2,500 |
| 13. Great Lakes Carbon Corp., Niagara Falls, NY | 1,047 | 1,375 |
| 14. Hammermill Papers Group, Erie, PA | 6,280 | 8,780 |
| 15. Hopes Architectural Products, Inc., Jamestown, NY | 300 | 300 |
| 16. Jamestown Metal MFG. Corp., Jamestown, NY | 110 | 250 |
| 17. Kaufman's Bakery, Buffalo, NY | 280 | 280 |
| 18. McInnes Steel Corp., Corry, PA | 1,500 | 1,500 |
| 19. Morgan Services, Inc., Buffalo, NY | 167 | 200 |
| 20. National Forge Co., Erie & Irvine, PA | 4,000 | 6,500 |
| 21. Niagara Cold Drawn Company, Buffalo, NY | 166 | 166 |
| 22. Neville-Synthesis (FNA Koppers, Inc.), Oil City, PA | 1,750 | 1,750 |
| 23. O–AT–KA Milk Products Corp., Batavia, NY, | 700 | 700 |
| Collins Center, NY | 350 | 400 |
| 24. Occidental Chemical Corp., Niagara Falls, NY | 648 | 700 |
| 25. PPG Industries, Pittsburgh, PA | 7,000 | 7,500 |
| 26. Pendrick Laundry, Buffalo, NY | 90 | 200 |
| 27. Sorrento Cheese Co., Buffalo, NY | 760 | 820 |

APPENDIX.—NATIONAL FUEL GAS SUPPLY CORPORATION END USER TRANSPORTATION CUSTOMERS—Continued

| End User | Currently authorized maximum volume (MCF/day) | Proposed maximum volume (MCF/day) |
|---|---|---|
| 28. Spaulding Fibre Co., Inc., Tonawanda, NY | 2,000 | 2,000 |
| 29. Special Metals Corp., Dunkirk, NY | 640 | 640 |
| 30. Stackpole Corp., St. Marys, PA | 1,800 | 1,800 |
| 31. TAM Ceramics, Inc., Niagara Falls, NY | 593 | 567 |
| 32. Trico Products Corp., Buffalo, NY | 1,310 | 1,310 |
| 33. Witco Chemical Corp., Bradford, PA | 1,500 | 1,500 |

**3. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.**

[Docket No. CP87-556-000]

Take notice that on September 24, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-556-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to establish two new delivery points to its existing firm sales customer, the City of Springfield, Tennessee (Springfield) under the blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to Springfield's request, it has agreed to establish two new delivery points to Springfield in Tennessee's Rate Zone 1 to be known as (1) the Betts Road Meter Station located in Robertson County, Tennessee and (2) the Cross Plains Meter Station located in Robertson County, Tennessee. Tennessee states that the new delivery point is necessary to better serve the requirements of Springfield's existing service area. The total estimated cost of the proposed new delivery points is $115,000.

Tennessee does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Springfield. Tennessee asserts that establishment of the proposed new delivery points is not prohibited by Tennessee's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery points without detriment or disadvantage to any of Tennessee's other customers.

Comment date: November 23, 1987, in accordance with Standard Paragraph G at the end of this notice.

**4. Texas Eastern Transmission Corporation**

[Docket No. CP87-28-001]

Take notice that on September 29, 1987, Texas Eastern Transmission Corporation (Applicant), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP87-28-001 an amendment to Docket No. CP87-28-000, pursuant to section 7(c) of the Natural Gas Act, to reflect a modification to the proposed facilities for which authorization to construct and operate was sought in Docket No. CP87-28-000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that, by its original application in Docket No. CP87-28-000, it sought to provide a firm storage service (referred to as Phase V) for Consolidated Edison Company of New York, Inc. of 23,115 dekatherms equivalent per day and to construct and operate 8.0 miles of 36-inch pipeline looping at four locations on its system in Pennsylvania, and to upgrade compression facilities by 8,600 Horsepower at each of two locations in Pennsylvania. Applicant further states that the total estimated cost for these facilities was $13,438,000.

Applicant requests that the original application be amended so as to construct and operate 6.25 miles of 36-inch pipeline looping at five locations on its system in various countries in Pennsylvania in lieu of the looping proposed in the original filing. Applicant indicates that it still requests authorization to provide the services and to upgrade compression facilities by 8,600 horsepower at each of two locations in Pennsylvania, as proposed in the original filing. Applicant states that the total capital cost is estimated to be $12,256,000.

Applicant submits that the original facilities were to be extended for approved pipeline looping authorized by Commission Order dated September 12, 1986 (36 FERC ¶ 61,273) in *Texas Eastern Transmission Corporation's* Docket No. CP85-806-000. Applicant further submits that, on June 12, 1987, Columbia Gas Transmission Corporation filed a petition to review such order in the United States Court of Appeals for the District of Columbia Circuit, Columbia *Gas Transmission Corp.* vs. *FERC*, Case No. 87-1260. It is indicated that Applicant has not accepted the certificate nor constructed facilities authorized in Docket No. CP85-806-000, since the order is pending judicial review.

Applicant states that the modification to the proposed facilities would result in a reduction of the estimates of Applicant's firm demand charge from $10.035 to $8.797.

Comment date: October 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**5. Williams Natural Gas Company**

[Docket No. CP87-557-000]

Take notice that on September 25, 1987, Williams Natural Gas Company (WGN), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87-557-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim regulating, measuring and appurtenant facilities serving Dooley and Company (Dooley) alfalfa dehydrator in Leavenworth County, Kansas; Western Alfalfa Corporation (Western Alfalfa) alfalfa dehydrating plant in Saline County, Missouri; Highway House Development Company (HHD) service station and restaurant in Newton County, Missouri; and Williams Pipe Line Company (WPL) pump station in Jefferson County, Kansas, and the transportation of gas through said facilities, under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the

Commission and open to public inspection.

WNG states that Dooley, Western Alfalfa, HHD and WPL have requested that the facilities be reclaimed. The total cost of the abandonment is approximately $6,780 with an estimated salvage value of $6,420.

Comment date: November 23, 1987, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23869 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA88-1-48-000]**

## ANR Pipeline Co.; PGA Rate Change Filing

October 9, 1987.

Take notice that on October 1, 1987, ANR Pipeline Company ("ANR"), pursuant to section 15 of the General Terms and Conditions of its F.E.R.C. Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Fourteenth Revised Sheet No. 18
Alternate Fourteenth Revised Sheet No. 18

ANR states that Fourteenth Revised Sheet No. 18 and Alternate Fourteenth Revised Sheet No. 18 incorporate changes proposed in its September 1, 1987 application to institute the Annual Charge Adjustment (ACA) and its September 25, 1987 filing pertaining to the functionalization and classification of Canadian gas costs consistent with Opinion Nos. 256 and 256-A.

ANR states that this filing also includes changes proposed in its concurrent Opinion Nos. 258 and 258-A compliance filing on October 1, 1987 relative to adoption of a Modified Fixed Variable rate design and elimination of ANR's non-gas fixed cost commodity minimum bill.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed on or before October 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23832 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP82-80-026]**

## ANR Pipeline Co.; Compliance Filing

October 8, 1987.

Take notice that on October 1, 1987, ANR Pipeline Company (ANR) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 1-A, to become effective November 1, 1987. ANR states that the filing reflects compliance with the Commission's Opinion Nos. 258 and 258-A and its subsequent order dated May 29, 1987. The revised Tariff Sheets and Alternate Tariff Sheets submitted with this filing are listed below:

*Original Volume No. 1*

Thirteenth Revised Sheet No. 18
Alternate Thirteenth Revised Sheet No. 18
Second Revised Sheet No. 20
Second Revised Sheet No. 25
First Revised Sheet No. 79
First Revised Sheet No. 80
Original Sheet No. 80A
Second Revised Sheet No. 111
First Revised Sheet No. 112
Second Revised Sheet No. 113
Second Revised Sheet No. 114

*Original Volume No. 1-A*

Third Revised Sheet No. 5
Alternate Third Revised Sheet No. 5
Third Revised Sheet No. 6
Alternate Third Revised Sheet No. 6
Second Revised Sheet No. 7
Alternate Second Revised Sheet No. 7
Second Revised Sheet No. 8
Alternate Second Revised Sheet No. 8

ANR states that this filing is being made under protest, and with full reservation of all rights relative to appeal of Opinion Nos. 258 and 258-A and any other lawful action relative to the subject matter. ANR has also stated that it has filed its apeal of Opinion Nos. 258 and 258-A to a court of competent jurisdiciton.

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 NW., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23872 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-1-000]**

## Bayou Interstate Pipeline System; Proposed Changes in FERC Gas Tariff

October 8, 1987.

Take notice that on October 1, 1987, in compliance with 18 CFR 154.38(d)(4)(vi), Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets set forth in Appendix A. Bayou states that an Annual Charges Adjustment provision, pursuant to 18 CFR Part 382, was also included in the filing. Bayou also proposed Original Volume No. 1A which sets in place the General Terms and Conditions under which Bayou could perform firm and interruptible onshore and offshore transportation under Section 311 of the Natural Gas Policy Act along with Rate Schedules FTS and ITS. The proposed effective date is November 1, 1987.

Copies of this filing have been served upon Bayou's jurisdictional customer, the Louisiana Public Service Commission, and the Department of Natural Resources Office of Conservation of the State of Louisiana.

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 the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file the with Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

**Appendix A—Proposed Tariff Sheets**

*FERC Gas Volume No. 1:*

First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 3
Original Sheet No. 3A
Third Revised Sheet No. 4
First Revised Sheet No. 6
First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet No. 50
First Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 75
Second Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 79
Original Sheet No. 80
Original Sheet No. 81

*FERC Gas Volume No. 1A:*

Original Sheet No. 1
Original Sheet No. 1A
Original Sheet Nos. 2 through 15
Original Sheet Nos. 31-41
Original Sheet Nos. 101-114
Original Sheet Nos. 201-221
Original Sheet No. 301

[FR Doc. 87-23865 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI88-1-000]**

## CSX Oil Gas Corp.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Authorizing Pre-Granted Abandonment

October 9, 1987.

Take notice that on October 2, 1987, CSX Oil, & Gas Corporation (CSX), pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f (1982), and the Federal Energy Regulatory Commission's (Commission) Regulations promulgated thereunder, applied for a blanket certificate of public convenience and necessity with pre-granted abandonment of the sale, of natural gas which remains subject to the Commission's Natural Gas Act jurisdiction for which producers have already received separate abandonment authority under section 7(b) of the Natural Gas Act.

CSX states that it is seeking resale and pre-granted abandonment authority for all Natural Gas Policy Act (NGPA) categories of natural gas subject to the Commission's jurisdiction under the Natural Gas Act, including contractually uncommitted natural gas reserves, for which producers selling gas to CSX have secured the necessary sales and abandonment authorizations pursuant to sections 7(b) and 7(c) of the Natural Gas Act. This includes, but is not necessarily limited to, natural gas abandoned in connection with take-or-pay settlements under §§ 2.76 or 2.77 of the Commission's regulations, 18 CFR 2.76 and 2.77 (1987), and natural gas abandoned under the authority of Commission Order No. 451, which provides producers automatic abandonment and blanket sales authority for gas released to them pursuant to the good faith negotiation procedures promulgated by Order No. 451. CSX is only seeking sales and abandonment authority for sales made on its own behalf. CSX's potential resale customers under the requested blanket certificate include interstate, intrastate and so-called "Hinshaw" pipelines, local distribution companies and industrial and other end-users, including firm sales customers of releasing interstate pipelines. CSX is not seeking transportation authority of gas sold under the blanket certificate sought by its application. The transportation authority necessary to implement the requested authorization is proposed to consist of transport authority provided by Commission Order Nos. 451 and 436, and NGPA section 311.

The natural gas sold by CSX under its requested blanket certificate, if granted, will be sold at market-clearing prices, not to exceed the applicable NGPA maximum lawful price of the applicable contract price, whichever is lower.

CSX further states that its request is consistent with the Commission's recently issued order in *The Resource Group, et al.*, 40 FERC (CCH) ¶ 61,153 (issued August 4, 1987), wherein the Commission granted blanket sales certificates with pre-granted abandonment authorizing a number of marketing companies to make sales for resale, and providing pre-granted abandonment for such sales. CSX has expressed its willingness to comply with the terms and conditions set forth in the Commission's order in *Citizens Energy Corporation, et al.*, 39 FERC (CCH) ¶ 61,106 (1987), except as to the term of such authority. CSX requests that the term of the sales and abandonment authority it requests extend for at least three years from the date of approval of such authority by the Commission.

CSX further states that it is willing to subject itself to the Commission's Natural Gas Act jurisdiction to the extent, and only to the extent, of its participation in these jurisdictional transactions in the same manner and on the same basis that the Commission's

jurisdiction was stated to attach to certain marketers in prior Commission orders granting such entities certain blanket sales and abandonment authorizations. CSX also requests that the Commission clarify and declare that CSX will be subject to the Commission's Natuiral Gas Act jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

Any person desiring to be heard or to make any protest with reference to say Application should on or before October 26, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a Motion to Intervene or Protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 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 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 Motion 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 to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23864 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA88-1-51-000]**

## Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

October 8, 1987.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on October 1, 1987, tendered for filing Ninth Revised Sheet Nos. 57(i) and 57(ii), and Fifteenth Revised Sheet No. 57-A to its FERC Gas Tariff to be effective November 1, 1987.

Ninth Revised Sheet Nos. 57(i) and 57(ii) reflect a purchased gas cost surcharge resulting from maintaining an unrecovered purchased gas cost account for the period commencing March 1, 1987 and ending August 31, 1987.

Fifteenth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing November 1, 1987 and ending April 30, 1988. No incremental costs are estimated for this period.

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. All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23814 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA88-1-53-000]**

## K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

October 8, 1987.

Take notice that K N Energy, Inc. ("K N") on October 1, 1987, tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Gas Cost Adjustment provision (section 19) and the Incremental Pricing Surcharges provision (section 20) of the General Terms and Conditions of K N's FERC Gas Tariff, Third Revised Volume No. 1 to reflect a decrease in the base cost of gas and to amortize certain unrecovered gas costs. K N states that the proposed changes would decrease the commodity rate under each of its jurisdictional rate schedules by 17.22¢ per Mcf, of which 16.85¢ per Mcf represents the decrease in the base purchase gas cost and .37¢ per Mcf represents the decrease in the unrecovered gas cost surcharge.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before October 15, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 211 and 214 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 motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23866 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-W

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**[Docket No. RP88-6-000]**

## North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

October 8, 1987

Take notice that North Penn Gas Company (North Penn) on October 1, 1987, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Eighty-Sixth Revised Sheet No. PGA-1
Second Revised Sheet No. 15 G(1)

North Penn states that these tariff sheets are being filed to be effective on October 1, 1987 in compliance with Commission Order Nos. 472 and 472-B issued May 29, 1987 and September 16, 1987, respectively in Docket No. RM87-3-018.

North Penn states that the revised tariff rates reflect an increase in the commodity portion of existing rates of $.0021 per Mcf to include the FERC Annual Charge Adjustment. A new section 16 Federal Energy Regulatory Commission Annual Charge Adjustment Provision has been added to the General Terms and Conditions of North Penn's Tariff to include the provision for the FERC Annual Charge Adjustment.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective October 1, 1987, as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested State 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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23867 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI88-4-000]**

## Pogo Producing Co.; Application for Limited-Term Blanket Certificate of Public Convenience and Necessity With Pregranted Abandonment

October 9, 1987.

Take notice that on October 1, 1987, Pogo Producing Company ("Pogo") filed an application pursuant to section 7(c) and 7(b) of the Natural Gas Act and Part 157 of the regulations of the Federal Energy Regulatory Commission (the "Commission") requesting a limited-term blanket certificate of public convenience and necessity authorizing the sale for resale of production from East Cameron Block 270 and Eugene Island Blocks 295 and 330 with pregranted abandonment. Pogo requests such certificate authority for a limited term of 3 years.

The subject production previously had been sold to Sea Robin Pipeline Company ("Sea Robin") under certificate authority granted in Docket Nos. CI73-477-000 and CI73-546-000. On September 15, 1987, the Commission granted Pogo authority to permanently abandon such sales to Sea Robin. *Phillips 66 Natural Gas Co., et al.*, Docket Nos. G-2605-001, *et al.* Currently, Pogo's production from the subject blocks is being sold under authority of Sea Robin's limited-term abandonment program authorized by the Commission in Docket No. CI86-595-000.

Pogo requests that the Commission process its application on an expedited basis pursuant to Rule 802 of the Commission's rules of practice and procedure.

Any person desiring to be heard or to make any protest with reference to said application should, on or before October 26, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with 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 protestant a party to the proceeding. Persons desiring to become parties to the proceeding or to participate as a party in any hearing herein must file motions 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 to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23873 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA88-1-38-000]**

## Ringwood Gathering Co.; Filing of Revised Tariff Sheets

October 9, 1987.

Take notice that on October 1, 1987 Ringwood Gathering Company tendered for filing Forty-Second Revised Sheet PGA-1. Ringwood Gathering Company states that Forty-Second Revised Sheet PGA-1 with a proposed effective date of November 1, 1987, is being filed to revise its Base Tariff Rate to reflect a net decrease for changes in the system cost of purchased gas and the recovery of the balance accumulated in its unrecovered purchased gas cost account.

Ringwood Gathering Company further states that the projected cost of purchased gas, as computed in said filing, is based on the applicable NGPA rates that will be paid during the effective period of this PGA. In certain instances, Ringwood has renegotiated the price to be paid for certain gas at costs below the maximum lawful NGPA rates. In these cases the renegotiated prices have been used.

Ringwood Gathering Company states that copies of this filing were served upon Williams Natural Gas Company, Oklahoma Natural Gas Company and interested state commissions.

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 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, to be filed on or before October 16, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23870 Filed 10-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA88-1-29-000]**

## Transcontinental Gas Pipe Line Corp., Proposed Changes in FERC Gas Tariff

October 8, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 1, 1987 the following proposed tariff sheets to Second Revised Volume No. 1 of its FERC gas tariff:

*Proposed Tariff Sheets*

Forty-Ninth Revised Sheet No. 12
Forty-Fifth Revised Sheet No. 15
Sixth Revised Sheet No. 15-A
Fifth Revised Sheet No. 247
Fifth Revised Sheet No. 248
Seventh Revised Sheet No. 249
Fifth Revised Sheet No. 250
Third Revised Sheet No. 250-A
Second Revised Sheet No. 250-B
Second Revised Sheet No. 250-C
First Revised Sheet No. 250-D
First Revised Sheet No. 250-E
First Revised Sheet No. 250-F

Transco states that the proposed tariff sheets reflect an overall rate increase of 14.9 cents per dt in the commodity charge under the CD, G, OG, E, ACQ and S-2 Rate Schedules.

Transco states that the increase of 14.9 cents per dt in commodity charges under the aforementioned Rate Schedules is comprised of 11.5 cents per dt increase related to the current gas cost portion of commodity rates and a 2.0 cents increase in the Deferred Adjustment and a 1.4 cents per dt increase related to the Special Transition Gas Cost Surcharge. Transco states that the instant PGA filing reflects a projected average cost of purchased gas of approximately $2.23 /dt based on projected system gas purchases as more fully reflected on Appendix B of the filing.

Transco states that as background to the instant filing, by order issued May 18, 1987 in TA85-1-29 et al., the Commission approved a Transco PGA Settlement which resolved for the period encompassed by 6 PGA proceedings all outstanding issues in those dockets except for those issues reserved by Art. II of the Settlement. Pursuant to such Settlement, Transco agreed, among other things, (i) to reflect a cost of gas in the instant PGA filing no greater than

$2.25 per dt, (ii) to be "at risk" for gas costs in excess of $2.2132 per dt for the period April 1, 1987, through October 31, 1987 (summer period) under certain specified conditions and (iii) to suspend normal deferred accounting for the foregoing summer period and to refund or surcharge customers directly, as appropriate, within sixty days of the conclusion of the summer period. Therefore, Transco states, as reflected in Appendix D of the filing, the negative surcharge of the instant PGA filing of 0.6 cents per dt is attributable only to (i) Account No. 191 carrying charges computed for the period April 1, 1987 through August 31, 1987 and (ii) an adjustment related to the inclusion of deferred state income taxes in the computation of Account No. 191 carrying charges.

Transco has also included revisions to Section 22 of its General Terms and Conditions to eliminate all incremental pricing provisions as a result of Congress' repeal of Title II of the NGPA and the Commission's Order No. 478.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested state commissions. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

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 Rule 211 and Rule 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 October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23868 Filed 10-4-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. RP88-5-000]**

## Transcontinental Gas Pipe Line Corp.; Tariff Filing

October 8, 1987.

Take notice that on October 1, 1987, Transcontinental Gas Pipe Line Corporation ("Transco") tendered for filing First Revised Sheet Nos. 187 through 196, 196-A and 371 through 375 to its FERC Gas Tariff, Second Revised Volume No. 1.

The proposed effective date of the revised tariff sheets is November 1, 1987.

Transco states that the purpose of the filing is to revise its currently effective Rate Schedule FT and its form of Service Agreement for use under its Rate Schedule FT so as to bring such tariff provisions into conformity with the manner in which its expects to operate as an open-access transporter under Commission Order 436 and 500. Transco states that the provisions of the revised Rate Schedule FT and FT Form of Service Agreement are more consistent with the Commission's policies than are the comparable provisions of Transco's currently effective tariff and that the revised tariff sheets delete any reference to Rate Schedule MDQ which has, not to date, been made effective.

Transco states that copies of the filing have been served upon its customers, State Commissions and other interested parties.

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 protest should be filed on or before October 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are availabale for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-23871 Filed 10-04-87; 8:45 am]

BILLING CODE 6717-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**[MM Docket No. 87-426; File Nos. BPH-851219 MD, et al.]**

## Applications For Consolidated Hearing; LNJ Communications, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| A. LNJ Communications, Montecito, CA. | BPH-851219MD | 87-426 |
| B. Sim Farar and Sonja Farar, A General Partnership, Montecito, CA. | BPH-851226MG | ..... |
| C. Joseph Edward Red Eagle Strickland, Montecito, CA. | BPH-851227ME | ..... |
| D. Raymond J. Briare, Montecito, CA. | BPH-851227MG | ..... |
| E. Shawn Phalen, Montecito, CA. | BPH-851231MO | ..... |
| F. Patricia Josephine Jacobsen d/b/a Peacock Broadcasting, Montecito, CA. | BPH-851231MP | ..... |
| G. Montecito Hispanic Community Broadcasting, Inc., Montecito, CA. | BPH-851231MQ | ..... |
| H. Ellwood Beach Broadcasting, Ltd., Montecito, CA. | BPH-851231MS | ..... |
| I. Gudrun Z. Dye and Brian De Silva d/b/a El Capitan Radio, Montecito, CA. | BPH-860102MW | ..... |
| J. Montecito Minority Media, Inc., Montecito, CA. | BPH-860102MY | ..... |
| K. Spirit Broadcasting, A California Limited Partnership, Montecito, CA. | BPH-860102MZ | ..... |
| L. Hildburg L. Charles, Montecito, CA. | BPH-860102NC | ..... |
| M. Josephson Broadcasting, Inc., Montecito, CA. | BPH-860102ND | ..... |
| N. Mark Morris, Montecito, CA. | BPH-860102NF | ..... |
| O. Donald Love, Montecito, CA. | BPH-860102NN | ..... |
| P. Gwendolyn Alice Hanan, Montecito, CA. | BPH-860102NO | ..... |
| Q. FM Montecito Limited Partnership, Montecito, CA. | BPH-860102NP | ..... |
| R. James Evans, Montecito, CA. | BPH-851231MR | ..... |
| S. Claudia Bratton, Montecito, CA. | BPH-860102MX (Dismissed) | ..... |
| T. Radio Representatives, Inc., Montecito, CA. | BPH-860102NA (Dismissed) | ..... |
| U. Better News, Inc., Montecito, CA. | BPH-860102NH (Dismissed) | ..... |
| V. Samuel T. Nee, Montecito, CA. | BPH-860102NJ (Dismissed) | ..... |
| W. Premier Broadcasting, Inc., Montecito, CA. | BPH-860102NK (Dismissed) | ..... |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding

headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Comparative, A–Q
2. Ultimate, A–Q

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–23849 Filed 10–14–87; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–799–DR]**

### Major Disaster and Related Determinations; California

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California, (FEMA–799–DR), dated October 7, 1987, and related determinations.

**DATE:** October 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

Notice: Notice is hereby given that, in a letter of October 7, 1987, the President declared a major disaster under the authority of the Disaster Relief act of 1974, as amended (42 U.S.C. 521 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of California resulting from an earthquake and continuing aftershocks beginning on October 1, 1987 is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of PL 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared disaster.

Los Angeles County for Individual Assistance and Public Assistance.
Orange County as an adjacent county for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Julius W. Becton, Jr.,**

*Director.*

[FR Doc. 87–23815 Filed 10–14–87; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

**[Docket No. 87–21]**

### Marine Surveyors Guild, Inc. et al. v. Cooper/T. Smith Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Marine Surveyors Guild, Inc., Captain Davenport & Associates, Inc. and Thomas F. Sessum d/b/a Sessum's Marine Surveyors ("Complaints") against Cooper/T. Smith Corporation ("Respondent") was served October 8, 1987. The complaint was filed pursuant to the Shipping Act, 1916, 46 U.S.C. app. 801, et seq., and the Shipping Act of 1984, 46 U.S.C. app. 1701, et seq. Specific alleged violations include sections 15, 16 and 17, Shipping Act, 1916, 46 U.S.C app. 816, 815 and 816, arising out of a requirement that Complainants execute an indemnity agreement and provide insurance coverage before access is allowed to Respondent's premises or vessels.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 10, 1988, and the final decision of the Commission shall be issued by February 10, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–23779 Filed 10–14–87; 8:45 am]

BILLING CODE 6730–01–M

### Northwest Consolidators, Inc., et al.; Ocean Freight Forwarder License

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573:

Northwest Consolidators, Inc., 12360 Lake City Way, NE., Seattle, Washington 98125, Officers: Gerald W. Smyth—Pres., Dir., Robert O. Smyth—V.P., Dir., Sharon S. Kramer—Sect./Treas., Dean Forgey—Asst. V.P., Gen. Mgr.

Allways Transportation Services, Inc., 5055 South Central Street, Chicago, IL 60638, Officers: Joseph R. Duffy, P. & Dir., Patricia Duffy, Dir., Norman Whiteside, V.P., Jonas Montoya, V.P.

Ace Express Inc., 5511 W. 104th St., Los Angeles, CA 90045, Officers: Alfred Tse, P., Charles Wong, V.P.

Inter-American Moving Services, Inc., 3601 NW. 55th Street, Miami, Florida 33142, Officer: Terence A. Rignault, President.

Seamar Consolidators Corp., 5429 NW. 72 Ave., Miami, Florida, Officer: Lourdes M. Leal, President.

Four Winds International, Inc., 4275 Campus Point Court, San Diego, California 92121, Officer: Robert A. Kelly, V.P.

Sea Rank International, Inc., 5950 6th Ave. South, Suite 113, Seattle, Washington 98108, Officers: Samuel H. Chen, Pres., K.W. Michael Tsang, V.P., Helen H-L Kwong, Secretary.

J.P. Shipping Consultants, Inc., 12735 S.W. 32nd Terrace, Miami, Florida 33175, Officers: Jorge Perez, P., Mireya Perez, Secretary.

By the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: October 8, 1987.

[FR Doc. 87-23778 Filed 10-14-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Arrow Bank Corp., et al.; Formations of: Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1987.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045.

*1. Arrow Bank Corp.* Glen Falls, New York; to acquire 100 percent of the voting shares of Saratoga National Bank and Trust Company, Saratoga Springs, New York, a *de novo* bank. Comments on this application must be received by October 28, 1987.

**B. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Atlantic Bancorporation,* Voorhees, New Jersey; to acquire 100 percent of the voting shares of Glendale Bank of Pennsylvania, Philadelphia, Pennsylvania, a *de novo* bank.

**C. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

*1. First State Corporation,* Waynesboro, Mississippi; to acquire 24.9 percent of the voting shares of First National Bank of Lucedale, Lucedale, Mississippi.

**D. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Malta Banquo, Inc.,* Malta, Montana; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Security Bank of Malta, Malta, Montana.

**E. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Community Bankers, Inc.,* Granbury, Texas; to acquire 100 percent of the voting shares of Farmers & Merchants State Bank, Burleson, Texas. *Comments on this application must be received by November 4, 1987.*

Board of Governors of the Federal Reserve System, October 9, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-23893 Filed 10-14-87; 8:45am]

BILLING CODE 6210-01-M

### Indiana National Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 1987.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Indiana National Corporation,* Indianapolis, Indiana; to engage *de novo* through its subsidiary, Indiana National Network Corporation, Indianapolis, Indiana, in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-23894 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interest persons may

express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 30, 1987.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoeig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. W. Dale Maudlin*, St. Joseph, Missouri, to acquire 5 percent; Robert W. Wolfe, Union Star, Missouri, to acquire 2.2. percent; and Robert G. Bolin, St. Joseph, Missouri, to acquire 5 percent of the voting shares of First American Bancshares, Inc., Union Star, Missouri, and thereby indirectly acquire First American Bank, Union Star, Missouri.

*2. David A. Norton*, Filley, Nebraska; to acquire 80 percent of the voting shares of FICO, Inc., Filley, Nebraska, and thereby indirectly acquire Filley Bank, Filley, Nebraska.

Board of Governors of the Federal Reserve System, October 9, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-23895 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

## Shawmut Corporation, et al.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 1987.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 01206:

*1. Shawmut Corporation*, Boston, Massachusetts; to engage *de novo* through it subsidiary, One Federal Asset Management, Inc., Boston, Massachusetts, in (a) portfolio investment advice and management for institutional and employee benefit account customers; (b) investment advisory services to and management of accounts supervised by Shawmut Corporation's banks. The investment research provided by One Federal Asset Management, Inc., will be utilized by said banks. Securities trading for said banks will in most instances be carried out by a central trading function of One Federal Asset Management. (c) serve as an investment adviser to investment company or companies that may be organized by Shawmut Corporation or any of its subsidiaries to the extent permitted by law; (d) provide portfolio investment advice or management to a limited number of personal trust or investment management agency customers; (e) furnish general economic infomation and advice, general economic statistical forecasting services and industry and company studies to the foregoing parties, pursuant to section 225.25(b) (4) (ii) (iii) (iv) and (v) of the Board's Regulation Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1987.

James McAfee,

*Associate Secretary of the Board.*

FR Doc. 87-23896 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

## The Bank of New York Co., Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or at the offices of the Board of Governors not later than November 12, 1987.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to acquire 100 percent of the voting shares of Irving Bank Corporation, New York, New York, and thereby indirectly acquire Irving Trust Company, New York, New York; The Bank of Lake Placid, Lake Placid, New York; Bank of Long Island, Babylon, New York; Central Trust Company, Rochester, New York; Dutchess Bank and Trust Company, Poughkeepsie, New York; Endicott Trust

Company, Endicott, New York; The First National Bank of Hancock, Hancock, New York; The First National Bank of Moravia, Moravia, New York; The Fulton County National Bank & Trust Company, Gloversville, New York; and the Hayes National Bank, Clinton, New York.

In connection with this application, Applicant has also applied to acquire Irving Business Center, Inc., New York, New York, and thereby engage in the business of marketing the products and services of Irving Trust Company pursuant to § 225.25(b) (1) and (5); Irving Financial Centers, Inc., New York, New York, and thereby engage in consumer lending and commercial lending to local business pursuant to § 225.25(b)(1); Irving Life Insurance Company, New York, New York, and thereby engage in providing credit-related life, mortgage and health insurance pursuant to § 225.25(b)(8); Irving Trust Company California, San Francisco, California; and thereby engage in providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); Irving Trust Company Florida, Miami, Florida; and thereby engage in providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); and One Wall Street Brokerage, Inc., New York, New York, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

2. *United Jersey Banks*, Princeton, New Jersey; to acquire 100 percent of the voting shares of First Valley Corporation, Bethlehem, Pennsylvania, and thereby indirectly acquire First Valley Bank, Bethlehem, Pennsylvania; the Hazleton National Bank, Hazleton, Pennsylvania; Hanover Bank of Pennsylvania, Wilkes-Barre, Pennsylvania; and West Side Bank, West Pittston, Pennsylvania. In addition, First Valley Inc., Bethlehem, Pennsylvania, has applied to become a bank holding company.

In connection with these applications, United Jersey Banks proposes to acquire First Valley Life Insurance Company, Bethlehem, Pennsylvania, and thereby engage in the reinsurance of credit life, accident and health insurance directly related to extensions of credit by its banking subsidiaries pursuant to § 225.25(b)(8); and First Valley Leasing, Inc., Bethlehem, Pennsylvania, and thereby engage in the leasing of personal property pursuant to § 225.25(b)(5).

Board of Governors of the Federal Reserve System, October 8, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-23787 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

## Donald E. Rogers; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 30, 1987.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Donald E. Rogers*, to acquire 7.50 percent; Darlene E. Rogers, to acquire 5 percent; Helen M. Rogers Trust, Helen M. Rogers and son, Donald Rogers, Trustees, Spencer, Oklahoma, to acquire 2.22 percent; Donna R. Smith, to acquire 7.50 percent; and Randall C. Smith, to acquire 5 percent of the voting shares of Spencer Bancshares, Inc., Spencer, Oklahoma, and thereby indirectly acquire Spencer State Bank, Spencer, Oklahoma. Unless otherwise stated, all notificants reside in Edmond, Oklahoma.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Robert C. Martin*, Lordsburg, New Mexico, to acquire 50.61 percent; Fred J. Ewing, Lordsburg, New Mexico, to acquire 1.52 percent; W. LeRoss Jone, Duncan, Arizona, to acquire 4.35 percent; Standford L. Jone, Duncan, Arisona, to acquire 0.17 percent; M. Don Kidd, Carlsbad, New Mexico, to acquire 9.15 percent; and Anderson W. Carter, Lovington, New Mexico, to acquire 9.15 percent of the voting shares of Western Bank, Lordsburg, New Mexico.

Board of Governors of the Federal Reserve System, October 8, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-23789 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

## Salem Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 3, 1987.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Salem Bancorp, Inc.*, Salem, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Salem Bank, Inc., Salem, Kentucky.

**B. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Maryville Bancshares, Inc.*, Chillicothe, Missouri, and its subsidiary Citizens State Bank of Maryville, Maryville, Missouri; to merge with Savannah Bancshares, Inc., Chillicothe, Missouri, and thereby indirectly acquire Community Bank of Savannah, Savannah, Missouri. Comments on this application must be received by October 30, 1987.

Board of Governors of the Federal Reserve System, October 8, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-23788 Filed 10-14-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 49 FR 10168, FR March 19, 1984) is amended to reflect the establishment of the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research in place of the current Center for Drugs and Biologics.

Currently, there are two major program concerns within the Center for Drugs and Biologics—Acquired Immune Deficiency Syndrome (AIDS) and the new drug review process. The crises and public pressures generated by these two major programs make them unmanageable in a single organization. FDA believes both programs need more focused leadership on a day-to-day basis and better management of resources than a single center director and deputy can provide. FDA believes that the director of its biologics program, which will focus on the development of AIDS vaccines and diagnostic tests and coordinate all other AIDS activities, needs to continue to report directly to the Commissioner due to the public health significance of the AIDS threat. FDA also believes that the director of the new drug review program needs to continue to report directly to the Commissioner due to the major public health gains that result from the approval of new therapies. Consequently, FDA believes that the establishment of two new centers in place of the current Center for Drugs and Biologics, with the AIDS program as the dominant focus in one and with the new drug review program as the dominant focus in the other, will enable FDA to focus more attention on these two vital programs.

*Section HF-B, Organization and Functions* is amended as follows:

1. Delete paragraph (n) and all subparagraphs for *Center for Drugs and Biologics (HFN).*

2. Insert new paragraph (n), *Center for Drug Evaluation and Research (HFN)* reading as follows:

(n) *Center for Drug Evaluation and Research (HFN).* Develops FDA policy with regard to the safety, effectiveness, and labeling of all drug products for human use.

Reviews and evaluates new drug applications (NDAs) and investigational new drug applications (INDs).

Develops and implements standards for the safety and effectiveness of all over-the-counter (OTC) drugs.

Monitors the quality of marketed drug products through product testing, surveillance, and compliance programs.

Coordinates with the Center for Biologics Evaluation and Research regarding activities for biological drug products. Such activities include research, compliance, and product review and approval.

Develops and promulgates guidelines on Current Good Manufacturing Practices for use by the drug industry.

Develops and disseminates information and educational material dealing with drug products to the medical community and the public in coordination with the Office of the Commissioner.

Conducts research and develops scientific standards on the composition, quality, safety, and effectiveness of human drugs.

Collects and evaluates information on the effects and use trends of marketed drug products.

Monitors prescription drug advertising and promotional labeling to assure their accuracy and integrity.

Analyzes data on accidental poisonings and disseminates toxicity and treatment information on household products and medicines.

In carrying out these functions, cooperates with other Agency components of FDA, other PHS organizations, governmental and international agencies, volunteer health organizations, universities, individual scientists, nongovernmental laboratories, and manufacturers of drug products.

3. Insert new paragraph (p), *Center for Biologics Evaluation and Research (HFB)* reading as follows:

(p) *Center for Biologics Evaluation and Research (HFB).* Administers regulation of biological products under the biological product control provisions of the Public Health Service Act and applicable provisions of the Federal Food, Drug, and Cosmetic Act.

Provides dominant focus in FDA for coordination of the Acquired Immune Deficiency Syndrome (AIDS) program. Works to develop an AIDS vaccine, AIDS diagnostic tests and conducts other AIDS-related activites.

Inspects manufacturers' facilities for compliance with standards, tests products submitted for release, establishes written and physical standards, and approves licensing of manufacturers to produce biological products.

Plans and conducts research related to the development, manufacture, testing, and use of both new and old biological products to develop a scientific base for establishing standards designed to ensure the continued safety, purity, potency, and efficacy of biological products.

Coordinates with the Center for Drug Evaluation and Research regarding activities for biological drug products. Such activities include research, compliance, and product review and approval.

Plans and conducts research on the preparation, preservation, and safety of blood and blood products, the methods of testing safety, purity, potency, and efficacy of such products for therapeutic use, and the immunological problems concerned with products, testing, and use of diagnostic reagents employed in grouping and typing blood.

In carrying out these functions, cooperates with other Agency components of FDA, other PHS organizations, governmental and international agencies, volunteer health organizations, universities, individual scientists, nongovernmental laboratories, and manufacturers of biological products.

**Prior Delegations of Authority**

Pending further delegations, directives, or orders by the Commissioner of Food and Drugs all delegations of authority to the Director, Deputy Director, and office directors of the abolished Center for Drugs and Biologics are vested in the Directors, Deputy Directors, and office directors of the new Center for Drug Evaluations and Research and the Center for Biologics Evaluation and Research as the delegations relate to their newly assigned functions and all delegations of authority to any other officer or employee of the Center in effect prior to the date of this order shall continue in effect in them or their successors.

Date: October 6, 1987.

Otis R. Bowen,

*Secretary.*

[FR Doc. 87-23833 Filed 10-14-87; 8:45 am]

BILLING CODE 4160-01-M

## Food and Drug Administration

[Docket No. 79D-0124]

## Draft Guideline for Drug Master Files; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guideline to assist persons submitting information to drug master files. FDA is making the draft guideline available for public comment to assist the agency in developing a final guideline. The guideline, when issued in final form, may be relied on by holders of drug master files in submitting information to FDA. The draft guideline was prepared by FDA's Center for Drugs and Biologics.

**DATE:** Written comments by January 13, 1988.

**ADDRESSES:** Requests for a copy of draft guideline and written comments regarding the draft guideline may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-adhesive labels to assist the Branch in processing your requests.

**FOR FURTHER INFORMATION CONTACT:** Steven H. Unger, Center for Drug and Biologics (HFN-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a draft guideline on drug master files. The guideline is intended to assist submitters of information to drug master files in preparing useful and well-organized submissions. The guideline is intended to replace the current Guideline for Drug Master Files published in 1978.

FDA is making this draft guideline available for public comment before issuing the guideline in final form. Following review of the comments submitted and after making any revisions the agency considers to be appropriate, the guideline will be made final, and FDA will announce its availability under § 10.90 (21 CFR 10.90(b)).

Section 10.90(b) provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. Under § 10.90(b), a person who follows a guideline can be assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. A person who chooses to use an alternate procedure may discuss the matter further with the agency to prevent an expenditure of money and effort for work that the agency may later determine to be unacceptable. Therefore, interested persons are encouraged to use this opportunity to submit comments on the draft guideline if they have suggestions for its revision.

Interested persons may, on or before January 13, 1988, submit written comments on the draft guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether amendments to, or revisions of, the draft guideline are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Dockets Management Branch.

Dated: October 2, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-23812 Filed 10-14-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0005]

## Safety of Electromedical Devices

**AGENCY:** Food and Drug Administration.

**ACTION:** Withdrawal of notice of intent.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing its notice of intent concerning the establishment of uniform standards for electromedical devices. FDA has determined that immediate action on a standard generic to all electromedical devices is not needed. FDA has concluded that there is insufficient evidence of actual risks to health owing to electrical leakage current from medical devices alone and that existing voluntary standards are being adhered to by manufacturers.

**FOR FURTHER INFORMATION CONTACT:** James J. McCue, Jr., Center For Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

**SUPPLEMENTARY INFORMATION:** During the period from 1976 through 1982 under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA's medical device classification panels recommended the classification of approximately 1,100 devices into class II (performance standards). Approximately 300 of these devices are electrically powered. During their review of devices, classification panels identified electrical safety as a concern for virtually every electrically powered device.

In the **Federal Register** of September 5, 1980 (45 FR 58970), FDA published a notice of intent announcing that it would consider various alternative approaches in providing reasonable assurance of the safety and effectiveness of electromedical devices. The agency announced that it would consider establishing a performance standard for electromedical devices to minimize electrical hazards, especially the hazards associated with electrical shock or leakage current. The notice requested data, information, and comment on the need for a safety performance standard for electromedical devices, how to achieve the establishment of such a standard, and whether certain existing voluntary standards were suitable for use as the basis of a mandatory performance standard. FDA also requested comments on whether it should endorse a voluntary standard or aspects of voluntary standards under FDA's then-proposed voluntary standards policy (45 FR 7490; February 1, 1980), or whether FDA should adopt or adapt an existing voluntary standard or parts of existing voluntary standards as a guideline. The then-proposed voluntary standards policy articulated FDA's involvement in the development, support, endorsement, and use of voluntary performance standards for medical devices. In the notice of September 5, 1980, FDA proposed to endorse voluntary standards that conformed to the "Criteria for Endorsement of Voluntary Standards" discussed in the notice of February 1, 1980. The notice of September 5, 1980, also discussed existing voluntary standard activities, State and local electrical codes, user practices, and the need for uniformity of electrical standards. An FDA summary of several voluntary standards dealing with electrical safety was included, as well as FDA's suggestion that a combination of provisions from the American National Standards Institute, Inc./ Association for the Advancement of Medical Instrumentation (ANSI/AAMI) SCL-12/78 and the International Electrical Commission (IEC) 601-1 might be the best approach to achieving uniformity and ensuring safety of electromedical devices.

FDA received 58 comments on the notice of September 5, 1980. Of these 58 comments, 29 were from manufacturers and trade associations, 21 were from professional users, 5 were from government agencies, and 3 were from individuals. Few comments supported the establishment of an electromedical performance standard. Most of the comments recommended that FDA do nothing at this time in regard to the alternatives proposed in the notice, i.e., performance standard, endorsement, or guidelines.

As noted above, one of FDA's reasons for issuing the notice of the ageny's intent to consider establishing standards for electromedical devices was its then-proposed voluntary standards policy. For the reasons discussed below, FDA changed its policy toward adoption of voluntary standards for devices.

In the **Federal Register** of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement; Class II Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. At this time, however, FDA does not have the resources to establish performance standards for all of the devices already classified (or being classified) in class II. Under the amendments, FDA is using the regulatory controls of class I to regulate a device classified into class II until a performance standard is established under section 514 of the act (21 U.S.C. 360d) for a class II device. In the October 23, 1985, notice, FDA announced it will consider the following factors when setting priorities for establishing performance standards for class II devices:

a. The seriousness of questions concerning the safety and effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device;

b. The recommendations of FDA's advisory committees;

c. The impact of an FDA guideline or recommendation;

d. The effect of a Federal standard or other regulatory controls under an authority other than the act;

e. The impact of voluntary standards;

f. The impact of activities authorized under the general controls provisions of the act;

g. The effect of dissemination of information and education efforts;

h. The sufficiency of voluntary corrective actions;

i. Valid scientific evidence developed since classification;

j. The existence of a petition for reclassification;

k. The impact of any other factors that affect a device's safety or effectiveness.

Based on its current policy on setting priorities for establishing performance standards for devices described above and based on a review of the comments received on the notice of intent of September 5, 1980, FDA concludes that the notice of intent should be withdrawn. A summary of the comments received on the notice of intent, and FDA's response follows:

1. Fourteen comments explicitly desired uniform standards for electrical safety of electromedical devices. Nineteen additional comments stated a preference for a particular standard, therefore implying a desire for uniformity.

**Mandatory Standards**

2. Three comments favored a mandatory electromedical device standard. Fifteen comments opposed any action by FDA, claiming that existing voluntary standards adequately address electrical hazards and that there is no electrical safety problem or, at least, none has been demonstrated.

FDA agrees that existing voluntary standards adequately address electrical hazards and that the number of electrical safety problems is small. In the mid-1960's, electrical safety was one of the most written about and talked about subjects in the health care industry. In 1970, Carl Walter estimated that 5,000 individuals died each year as a result of electric shock from medical devices. (Walter, Carl W., "Electrical Hazards in Hospitals," *Hospital Practice*, December 1970, pp. 53–56.)

To determine the extent of the electrical risks presented by devices, FDA reviewed the recent published literature, the data from FDA's Device Experience Network (DEN), and reports submitted to FDA under the medical device reporting regulations (21 CFR Part 803).

Since FDA published the notice of intent in 1980, FDA published the medical device reporting regulations (21 CFR Part 803) (49 FR 36326; September 14, 1984). These regulations became effective on December 13, 1984, and provide that manufacturers and importers of medical devices which receive, or otherwise become aware of, information that reasonably suggests that one of their marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to death or serious injury if the malfunction were to recur, report such occurrence to FDA. An analysis of the medical device reporting data demonstrates that an electrical safety standard generic to all electromedical devices would not have prevented the majority of the deaths, serious injuries, and malfunctions which have been reported to FDA regarding electromedical devices. Indeed, most reports of deaths or injuries from electromedical devices do not involved electrical shock or leakage current and any such reports that are received are not common to all electromedical devices.

FDA's review of the current literature, data from DEN, and reports submitted under Part 803 identified only a few cases of deaths or injuries that might have been prevented by a performance standard. While it is possible that the extent of unreported deaths and injuries may be higher than what is documented in the literature, DEN, and reported to FDA under Part 803, FDA could find no tangible evidence that this is the case. FDA concludes that a reasonable assurance of safety has already been achieved without the need for additional FDA actions.

If the number of deaths and injuries has decreased since the late 1960's as the comments argue and the available data support, it may be due, in part to the development and use of voluntary standards. Compared to the 1960's, FDA believes that the conformance by device manufacturers with any one of the current voluntary standards provides a reasonable assurance of the safety of electromedical devices.

Under section 513 of the act, all medical devices are subject to the general controls provisions of the act. These provisions provide FDA with authority (1) to determine whether a device is adulterated (section 501 of the act); (2) to determine whether a device is misbranded (section 502 of the act); (3) to require registration of device manufacturers and listing of their devices (section 510 of the act); (4) to determine whether a device should be banned (section 516 of the act); (5) to require notification by health professionals of device defects and, where necessary, to order repair replacement, or refund for the device (section 518 of the act); (6) to require records and reports necessary to ensure that a device is not adulterated or misbranded (section 519 of the act); (7) to require restricted sale, distribution, or use of a device (section 520(e) of the act); (8) to require device manufacturers

to follow current good manufacturing practices (section 520(f) of the act); and (9) to require manufacturers of new or investigational devices to submit applications for exemption before initiating clinical investigations (section 520(g) of the act). These general controls provisions, coupled with the requirements under Part 803 for reporting to FDA of deaths, serious injuries, and malfunctions associated with medical devices, have enabled FDA to act quickly to correct device safety problems reported to the agency. For example, FDA has worked directly with manufacturers of apnea detection monitors to redesign their products to eliminate potential safety problems caused by incorrect use. These design changes, however, were not made because of electrical leakage current such as would be covered by an electrical safety standard.

As noted above, FDA will initiate proceedings to establish performance standards for class II devices on a priority basis, underaking action first for devices with the most serious health hazards. FDA continues to develop the information necessary to initiate proceedings to establish performance standards for specific electromedical devices for which associated hazards (other than electrical safety) warrant a high priority. Because FDA believes that current voluntary electrical safety standards adequately address the electrical hazards of electromedical devices and are adhered to by manufacturers, FDA will continue to participate in the development and revision of voluntary standards for electromedical devices.

In summary, FDA will defer the initiation of proceedings to establish a safety performance standard for electromedical devices because (1) there is a lack of documented evidence of electrical safety risks; (2) if deaths or injuries from electrical shock or leakage current do occur, manufacturers must report them to FDA promptly under Part 803; (3) the existence of voluntary standards and the adherence to voluntary standards by the majority of manufacturers provide adequate control of risks of electrical shock or leakage current; and (4) the general controls provisions of the act are sufficient to provide reasonable assurance of the safety and effectiveness of devices that present risks to health only of electrical shock or leakage current.

**Endorsement**

3. Four comments supported FDA endorsement of voluntary standards and 15 comments explicitly opposed any action by FDA. Several comments argued that such endorsement by FDA would give the appearance of substantive rulemaking by FDA and would be perceived as mandatory.

Although FDA did not intend that its endorsement of a voluntary standard would have the force and effect on law, FDA concurs with these comments objecting to endorsement. FDA now believes that endorsement of a voluntary standard by FDA would mislead manufacturers and consumers to believe that the endorsed standard was mandatory. FDA, therefore, does not consider endorsement of an existing voluntary standard as a viable option.

**Guideline**

4. Four comments objected to FDA developing a guideline regarding safety of electromedical devices under § 10.90(b) of the agency's administrative practices and procedures regulations (21 CFR 10.90(b)). These comments generally discouraged the use of a guideline in lieu of a mandatory performance standard on the ground that confusion existed as to whether a guideline is enforceable. The comments also questioned the use of a guideline as a possible means of issuing a de facto regulatory standard. Four additional comments stated a preference for an FDA guideline on electrical safety to help address uniformity.

FDA believes that the regulatory status of a guideline is not confusing. FDA considers that a guideline made available under 21 CFR 10.90(b) states procedures or standards of general applicability that are not legal requirements but are acceptable to FDA for a subject matter which falls within the laws administered by FDA. Manufacturers of electromedical devices could have relied upon a guideline with the assurance that it is acceptable to FDA. FDA concludes, however, that a guideline is not necessary at this time because voluntary standards appear adequate in preventing risks to health from electrical shock or leakage current from eletromedical devices.

**Uniformity**

5. Thirty-one comments stated preferences for one or more specific voluntary standards, with 19 comments preferring a particular standard. Therefore, these comments indicate a desire for uniformity of standards. Fourteen comments stated explicitly that uniformity of standards for the safety of electromedical devices was desired. Two comments stated that uniformity of voluntary standards is not a factor in the safety or effectiveness of a device and, therefore, should not be FDA's concern. Only one comment saw an advantage to diversity of standards.

FDA believes that a lack of uniformity of voluntary standards does play a role in the marketplace by raising the costs of medical devices. Higher costs may, in turn, reduce the availability of some devices to patients. Uniformity is also a concern of FDA when diversity of device characteristics results in risks regarding safety or effectiveness. However, in the case of risk of electrical shock or leakage current, the lack of uniformity has not resulted in unsafe electromedical devices because, as discussed infra, all of the voluntary standards are adequate to protect the public health. Moreover, the voluntary standards appear to be undergoing revisions which would render them more uniform.

Uniformity is not the only concern of FDA. FDA considers the factors listed in the notice described above (50 FR 43060) when setting priorities for initiating proceedings to establish performance standards under section 514 of the act (21 U.S.C. 360d). Because FDA considers these other factors in setting priorities for initiating such proceedings, the lack of uniformity of existing voluntary standards alone is insufficient to cause FDA to establish a mandatory performance standard for electromedical devices.

**ANSI/AAMI SCL-12/78 and IEC 601-1**

6. In the September 5, 1980, notice, FDA suggested a standard combining ANSI/AAMI SCL-12/78 and IEC 601-1 as a possible approach to the control of electrical hazards in electromedical devices. Nine comments were in favor of ANSI/AAMI SCL-12/78, while five comments were opposed to its use. Fifteen comments were in favor of IEC 601-1, while six were opposed to its use.

Currently, the American voluntary standards community and American manufacturers are working to have IEC-601-1 revised to more closely reflect the American position on leakage current.

Because FDA has decided at this time to defer any of its proposed actions to control electrical hazards of electromedical devices, the agency's acceptance or rejection of these voluntary standards as the basis for a uniform electrical safety standard is not necessary.

FDA will, however, consider the specifications of these two voluntary standards in addition to specifications of other voluntary standards when the agency initiates a proceeding to establish a mandatory performance standard for a specific eletromedical device.

**Conclusion**

For the reasons above, FDA concludes that immediate action on a standard generic to all electromedical devices is not necessary. FDA will consider electrical leakage current risks when it initiates a proceeding to establish a mandatory standard for a specific eletromedical device. Accordingly, FDA withdraws the notice of intent published in the **Federal Register** of September 5, 1980 (45 FR 58970).

Dated: October 7, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-23838 Filed 10-14-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK-963-4213-15; F-14862-A]

### Alaska Native Claims Selection; Kuitsarak, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Kuitsarak, Inc., notice of which was published in the **Federal Register** 48 FR 44668 on September 29, 1983, is modified by the addition of two easements and amended to exclude Native allotment AA-53859, Parcel C, in Section 32, Township 11 South, Range 72 West, Seward Meridian.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in *The Tundra Drums*. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until November 16, 1987, to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given September 29, 1983, as final.

**Ann Johnson,**

*Chief, Branch of Calista Adjudication.*

[FR Doc. 87-23827 Filed 10-14-87; 8:45 am]

BILLING CODE 4310-JA-M

[NM-010-4333-10; GP8-0101]

### Three Emergency Road Closures in Rio Puerco Resource Area; New Mexico

October 8, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Effective October 10, 1987. The Rio Puerco Resource Area, Albuquerque District, Bureau of Land Management will be closing (except for authorized users and administrative purposes) three segments of road located in the Ignacio Chavez Grant in T. 15 and 16N., R4 and 5W., Sandoval and McKinley Counties, New Mexico. This closure supersedes the May 18, 1987 closure filed on May 15, 1987, FR Document 87-11323; NM-010-GP7-0119. The first segment is approximately six miles of BLM Road No. 1103 traversing the Grant. The second segment is approximately 1.5 miles in length and begins near Toro Tank. The road proceeds south past Toro Tank and turns west to regain BLM Road No. 1103. The third portion begins at the southern terminus of BLM Road No. 1103 and proceeds in a northwest direction near Heifer Tank for approximately 3 miles to the junction of Forest Service Road No. 239. A map depicting the three closures is available at the Bureau of Land Management, Albuquerque District Office. Under the emergency closure authority contained in 43 CFR 8341.2, this action is being taken to prevent vehicle use associated with these access routes from causing additional damage to the soils, vegetative and scenic resource values on the Ignacio Chavez Grant. The closures will remain in effect until the adverse impacts are eliminated and adequate measures are implemented to prevent recurrence.

**FOR FURTHER INFORMATION CONTACT:** Herrick E. Banks, Area Manager, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, NM 87107, (505) 761-4504.

**Andrew Aboytes,**

*Acting Associate District Manager, Bureau of Land Management*

[FR Doc. 87-23814 Filed 10-9-87; 12:11 pm]

BILLING CODE 4310-FB-M

[CA-930-08-4332-09]

### Availability of Draft Environmental Impact Statement; Preliminary Wilderness Recommendations for the Garcia Mountain, Rockhouse, Domeland, Machesna, South Warner Contiguous, Yolla Bolly-Big Butte, and Carson Iceberg Section 202 Wilderness Study Areas, CA; Public Hearings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of Draft EIS and Public Hearing.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy act of 1969, the Bureau of Land Management has prepared a Draft Environmental Impact Statement (DEIS) on wilderness recommendations for eight section 202 Wilderness Study Areas (WSAs); The Garcia Mountain WSA, Rockhouse WSA, Domeland WSA and Machesna WSA in the Bakersfield District; the South Warner Contiguous WSA in the Susanville District; the Big Butte WSA and Yolla-Bolly WSA in the Ukiah District; and the Carson Iceberg WSA in the Carson City District.

Alternatives analyzed for each of the section 202 WSAs were: (1) All Wilderness and (2) No Wilderness/No Action, which is the continuation of present management under the guidance of existing land use plans. A Partial Wilderness Alternative was also analyzed for the South Warner Contiguous WSA. The preliminary recommendations presented in the DEIS are: Garcia Mountain WSA—No Wilderness/No Action; Rockhouse WSA—No Wilderness/No Action; Domeland WSA—No Wilderness/No Action; Machesna WSA—No Wilderness/No Action; South Warner Contiguous WSA—Partial Wilderness; Big Butte WSA—No Wilderness/No Action; Yolla-Bolly WSA—No Wilderness/No Action; and Carson Iceberg WSA—All Wilderness.

**DATES:** Comments on the DEIS are being solicited form public agencies and interested individuals and organizations. Written Comments should be submitted by January 18, 1988, to the California State Director (CA-930.16), Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825, in order to be considered in the Final Environmental Imapct Statement.

Three public hearings on the adequacy of the DEIS and the preliminary recommendations are scheduled.

December 1, 1987 beginning at 7:30 p.m., Cedarville Community Hall, Bonner and Center Steets, Cedarville, CA.
December 2, 1987 beginning at 7:00 p.m., Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, CA.
December 9, 1987 beginning at 7:30 p.m., Bakerfield District Office, Bureau of Land Management, 800 Truxtun Drive, Room 224, Bakersfield, CA.

**SUPPLEMENTARY INFORMATION:**

Statements concerning any of the WSAs may be presented and will be recorded at any of the public meetigns. Copies of the DEIS are available for review at local libraries and a limited number of copies can be obtained from the following Bureau of Land Management offices: Ukiah District Office, Ukiah, CA; Arcata Resource Area Office, Arcata, CA; Redding Resource Area Office, Redding, CA; Susanville District Office, Susanville, CA; Surprise Resouce Area Office, Cedarville, CA; Bakersfield District Office, Bakersfield, CA; Carson City District Office, Carson City, NV; and Walker Resource Area Office, Carson City, NV. Additional copies of the DEIS are available from the California State Office, 2800 Cottage Way, Sacramento, CA 95825 and the Washington Office, 18th and C Streets NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:**

James T. Jennings, Bakersfield District Office, 800 Truxtun Avenue, Bakersfield, CA 93301, (805) 861–4287.
Roger A. Farsham, Surprise Resoruce Area Office, (Susanville District), 602 Cressler Street, PO Box 460, Cedarville, CA 96104, (916) 279–6101.
Earle G. Curran, Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482–5599, (707) 462–3873.
Stephen Weiss, Walker Resource Area (Carson City District), 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 882–1631.

Date: October 8, 1987.

**Ronald D. Hofman,**

*Associate State Director.*

[FR Doc. 87–23782 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–40–M

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**[Alaska AA–48583–AY]**

## Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48583–AY has been received covering the following lands:

**Copper River Meridian, Alaska**

T. 13 N., R. 7 W.,
Sec. 29, NE¼NW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from April 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48583–AY as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1987, subject to the terms and conditions cited above.

Dated: October 5, 1987.

**Kay F. Kletka,**

*Chief, Branch of Mineral Adjudication.*

[FR Doc. 87–23805 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JA–M

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**[Alaska AA–48686–AX]**

## Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48686–AX has been received covering the following lands:

**Fairbanks Meridian, Alaska**

T. 22 S., R. 6 E.,
Sec. 11, E½.
(320 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48686–AX as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1987, subject to the terms and conditions cited above.

Dated: October 5, 1987.

**Kay F. Kletka,**

*Chief, Branch of Mineral Adjudication.*

[FR Doc. 87–23806 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JA–M

## Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48596–B has been received covering the following lands:

**Copper River Meridian, Alaska**

T. 10 N., R. 6 W.,
Sec. 25 NW.
(160 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48596–B as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1987, subject to the terms and conditions cited above.

**Kay F. Kletka,**

*Chief, Branch of Mineral Adjudication.*

Dated: October 5, 1987.

[FR Doc. 87–23807 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JA–M

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**[Alaska AA–49100–I and AA–49073–S]**

## Proposed Reinstatement of Terminated Oil and Gas Leases; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas leases AA–49100–I, and AA–49073–S has been received covering the following lands:

**Fairbanks Meridian, Alaska (AA–49100–I)**

T. 18 S., R. 3 W.,
Sec. 11, S½NW¼.
(80 acres)

**Fairbanks Meridian, Alaska (AA–49073–S)**

T. 19 S., R. 4 E.,
Sec. 7, N½NW¼.
(75 acres)

The proposed reinstatement of the leases would be under the same terms and conditions of the original leases, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals

and royalties accruing from March 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of leases AA–49100–I, and AA–49073–S as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the leases, effective March 1, 1987, subject to the terms and conditions cited above.

**Kay F. Kletka,**

*Chief, Branch of Mineral Adjudication.*

Dated: October 5, 1987.

[FR Doc. 87–23808 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JA–M

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**[CO–940–87–4111–15; C–26486]**

## Proposed Reinstatement of Oil and Gas Lease; Colorado

Notice is hereby given that a petition for reinstatement of oil and gas lease C–26486 for lands in Montrose County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1987, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16-⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having 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, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236–1772.

**Richard E. Richards,**

*Supervisor, Oil and Gas/Geothermal Leasing Unit.*

[FR Doc. 87–23801 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–JB–M

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**[MT–920–08–4111–14; NDM 63257]**

## Proposed Reinstatement of Terminated Oil and Gas Lease; North Dakota

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease NDM 63257, Bowman County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having 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), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: October 6, 1987.

**Cynthia L. Embretson,**

*Chief, Fluids Adjudication Section.*

[FR Doc. 87–23798 Filed 10–14–87; 8:45 am]

BILLING CODE 4310–DN–M

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## Public Review Period for U.S. Geological Survey and United States Bureau of Mines; "Mineral Survey Reports": Wilderness Study Areas; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Idaho, Bureau of Land Management (BLM), is requesting the public to review combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been completed for preliminarily suitable Wilderness Study Areas (WSAs). If the public identifies significant differences in interpretation of the data presented in the reports or submits significant new minerals data for consideration, the Bureau of Land Management will request USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Boise, Burley, Idaho Falls, Salmon, Shoshone, and Coeur d'Alene.

**DATE:** New Information will be accepted on the reports enumerated in this notice until December 31, 1987.

**ADDRESS:** Send information on reports to: Deputy State Director for Minerals, BLM, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

**FOR FURTHER INFORMATION CONTACT:** Bob DeTar or Bill LaVelle, BLM, Idaho State Office, Division of Mineral Resources, 3380 Americana Terrace, Boise, Idaho 83706 (208) 334–1189.

**SUPPLEMENTARY INFORMATION:** Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system, to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the Bureau of Land Management prior to making its final wilderness suitability recommendations to the Secretary of Interior, the State Director, Idaho is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the U.S. Geological Survey and U.S. Bureau of Mines for further consideration. Evaluations received by the Bureau of Land Management from the U.S. Geological Survey and U.S. Bureau of Mines will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation are not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.

4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address, and phone number of the person who may be contacted by technical personnel of the Bureau of Land Management, U.S. Geological Survey or U.S. Bureau of Mines assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the Public without consent.

The following is a list of available Mineral Survey Reports by Wilderness Study Area (WSA) on which new information will be accepted.

| WSA No. | Name | Report No. |
|---|---|---|
| 33-15 | Hells Half Acre | Bulletin 1718-A |
| 16-40 | No. Fork Owyhee River | Bulletin 1719-A |
| 16-49D | Yatahoney Creek | Bulletin 1719-B |
| 16-49E | Battle Creek | Bulletin 1719-B |
| 16-52 | Juniper Creek | Bulletin 1719-B |
| 16-48C | Little Owyhee River | Bulletin 1719-C |
| 16-48B | Owyhee River Canyon | Bulletin 1719-D |
| 16-49A | Deep Creek | Bulletin 1719-D |
| 111-6 | Little Jacks Creek | Bulletin 1720-A |
| 111-7B | Duncan Creek | Bulletin 1720-A |
| 111-7C | Big Jacks Creek | Bulletin 1720-A |

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed reports may be purchased from: U.S. Geological Survey, Books and Open File Reports, Box 25425, Federal Center, Denver, CO 80225.

Date: October 5, 1987.

**Bill R. Lavelle,**

*Deputy State Director for Mineral Resources.*

[FR Doc. 87-23809 Filed 10-14-87; 8:45 am]

BILLING CODE 4310-GG-M

## Minerals Management Service

**[FES 87-49]**

### Availability of the Final Environmental Impact Statement Regarding Proposed Central, Western, and Eastern Gulf of Mexico Lease Sales 113, 115, and 116

The Minerals Management Service (MMS) has prepared a final Environmental Impact Statement (EIS) relating to proposed 1988 Outer Continental Shelf (OCS) oil and gas lease sales in the Central, Western, and Eastern Gulf of Mexico. Proposed Central Gulf of Mexico Sale 113, Western Gulf of Mexico Sale 115, and Eastern Gulf of Mexico Sale 116 will offer for lease approximately 34.5 million acres, 29.0 million acres, and 71.8 million acres, respectively. Single copies of the final EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Copies of the final EIS are available for review at the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenburg Library, 2310 Sealy Street, Galveston, Texas; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library, 760 Riverside, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress Street, Lafayette, Louisana; Calcasieu Parish Library, Downtown Branch, 411 Pujo Street, Lake Charles, Louisiana; Nicholls State Library, Nicholls State University, Thibodaux, Louisiana; Harrison County Library, 14th and 21st Avenue, Gulfport, Mississippi; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Fla.; West Florida Regional Library, 200 West Gregory Street, Pensacola, Fla.; Northwest Regional Library System, 25 West Government Street, Panama City, Fla.; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 NW. Aaron Street, Port Charlotte, Florida; and Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

**William D. Bettenberg,**

*Director, Minerals Management Service.*

Date: October 9, 1987.

Approved:

**Bruce Blanchard,**

*Director, Office of Environmental Project Review.*

[FR Doc. 87-23839 Filed 10-14-87; 8:45 am]

BILLING CODE 4320-MR-M

## INTERNATIONAL TRADE COMMISSION

**[332-250]**

### Harmonized Commodity Description and Coding System; Continuity of Import and Export Trade Statistics After Implementation

**AGENCY:** International Trade Commission.

**ACTION:** Institution of investigation.

**SUMMARY:** Following receipt of a request from the United States Trade Representative (USTR) at the direction of the President, the Commission instituted investigation No. 332-250 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purposes of preparing a cross-reference between the current Tariff Schedules of the United States Annotated (TSUSA) and the proposed Harmonized Tariff Schedule of the United States (HTS) and compiling statistical tables reflecting U.S. import and export trade for the years 1983-1987 in terms of proposed 8-digit HTS subheadings and 10-digit Harmonized System-based Schedule B (Schedule B) numbers, respectively.

**EFFECTIVE DATE:** October 5, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Holm Kappler, Deputy Director (telephone 202-523-0362), or Mr. Lawrence DiRicco, Nomenclature Analyst (telephone 202-523-4953), Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (202) 724-0002.

**SUPPLEMENTARY INFORMATION:** In order to provide the international trade community with a means to maintain a reasonable degree of continuity in historical statistical data after the transition to HTS and HS-based Schedule B statistical reports, the USTR at the direction of the President requested the Commission to prepare: (1) A cross-reference between the current TSUSA and the proposed HTS, (2) a statistical compilation reflecting the estimated total value of U.S. imports for consumption for the years 1983-1987, both by country and in the aggregate, in terms of proposed 8-digit HTS subheadings, and (3) a statistical compilation reflecting the estimated total value of U.S. exports for the years 1983-1987, both by country of destination and in the aggregate, in terms of the 10-digit Schedule B numbers.

The USTR requested that the Commission report on the TSUSA to proposed HTSUS cross-reference no later than January 31, 1988, and on the trade statistics compilations no later than May 31, 1988, and that the Commission arrange for these reports to be available to the public in printed form and microfiche through the National Technical Information Service and on magnetic media through the Bureau of the Census.

The Commission does not plan to hold a public hearing or seek written statements or other information from interested parties in this matter.

By order of the Commission.

Issued: October 6, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-23911 Filed 10-14-87; 8:45 am]

BILLING CODE 7020-02-M

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[Investigation No. 337-TA-253]

## Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor; Decision Granting Application for Interlocutory Appeal and Reversing Order Excluding Evidence as to Patent-Based Affirmative Defense

**AGENCY:** International Trade Commission.

**ACTION:** Decision to permit an interlocutory appeal of an order excluding evidence pertaining to respondents' patent based affirmative defense to the antitrust allegations of this investigation, and to reverse the order excluding such evidence.

**FOR FURTHER INFORMATION CONTACT:** Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

**SUPPLEMENTARY INFORMATION:** On September 4, 1987, the presiding administrative law judge (ALJ) issued Order No. 47 granting the motion *in limine* of complainant Aunyx Corp. to exclude all evidence to be offered by respondents Canon, Inc. and Canon, U.S.A., Inc., in furtherance of their patent-based affirmative defense to the allegations of antitrust law violations. The Commission investigative attorney (IA) supported Aunyx's motion and respondents opposed the motion. The ALJ found that the patents at issue would not constitute a defense to the antitrust allegations and were irrelevant to the investigation. The ALJ also found that respondents' delay in asserting their patent rights constituted bad faith sufficient to bar the defense.

On September 9, 1987, the Canon respondents filed a petition with the ALJ for leave to file an interlocutory appeal with the Commission of Order No. 47. On September 9, 1987, the ALJ issued Order No. 48 granting leave to file an application for interlocutory appeal.

An application for interlocutory appeal was filed by respondents on September 14, 1987. On September 21, 1987, Aunyx filed an answer to respondent's application for interlocutory appeal. On September 22, 1987 the IA filed an answer to the application for interlocutory appeal.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 210.70 of the Commission rules (19 CFR 210.70).

Copies of the Commission's Action and Order, Opinon, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: October 5, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-23905 Filed 10-14-87; 8:45 am]

BILLING CODE 7020-02-M

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[Investigation No. 337-TA-261]

## Certain Ink Jet Printers Employing Solid Ink; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 10:00 a.m. on November 16, 1987, in Hearing Room B at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue, NW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: October 8, 1987.

Sidney Harris,

*Administrative Law Judge.*

[FR Doc. 87-23906 Filed 10-14-87; 8:45 am]

BILLING CODE 7020-02-M

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[Investigation No. 337-TA-277]

## Certain Marine Automatic Pilots; Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 9, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Electro-Mechanical Products Inc. d/b/a First-Mate Marine Auto Pilots, 41 Kindred Avenue, Stuart, Florida 34994 and John F. Cyr, 2002 NE. Felicita Place, Jensen Beach, Florida 33457. The complaint was supplemented on September 15, 1987 and again on September 28, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain marine automatic pilots and components thereof; and in their sale, by reason of alleged direct, induced and contributory infringement of claims 1-4 of U.S. Letters Patent 4,681,055. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Gertler, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0115.

*Authority:* The authortity for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

*Scope of investigation:* Having considered the complaint, the U.S. International Trade Commission, on October 5, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain marine automatic pilots, or in their sale, by reason of alleged direct or induced infringement of claims 1-4 of U.S. Letters Patent 4,681,055, the effect or tendency of

which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complaintants are—

Electro-Mechanical Products Inc., d/b/a First-Mate Marine Auto Pilots, Stuart, Florida 34994

John F. Cyr, 2002 NE. Felicita Place, Jensen Beach, Florida 33457

(b) The respondent is the following company, alleged to be in violation of section 337, and is the party upon which the complaint is to be served: King Marine Electronics, Inc., 5300 140th Avenue North, Clearwater, Florida 33520

(c) Jeffrey L. Gertler, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 125, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.21 or the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: October 6, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–23907 Filed 10–14–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–267]**

## Certain Minoxidil Power, Salts and Compositions for use in Hair Treatment; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

**AGENCY:** International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Tulsa Intertrade.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, on October 9, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC, 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

*Written Comments:* Interested persons may file written comments with the commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC, 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: October 9, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–23908 Filed 10–14–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–267]**

## Certain Minoxidil Powder, Salts, and Compositions for use in Hair Treatment; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on October 19, 1987, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue NW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: October 5, 1987.

**Janet D. Saxon,**

*Chief Administrative Law Judge.*

[FR Doc. 87–23909 Filed 10–14–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–266]**

## Certain Reclosable Plastic Bags and Tubing; Determination Not To Review Initial Determination and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

**AGENCY:** International Trade Commission.

**ACTION:** The U.S. International Trade Commission has determined not to review an initial determination (ID) granting in part a motion for temporary relief in the above-captioned investigation. The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding.

*Authority:* The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff

Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a, and in §§ 210.53–210.58 of the Commission's Rules of Practice and Procedure (19 CFR 210.53–210.58).

**FOR FURTHER INFORMATION CONTACT:** Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–525–0375.

**SUMMARY:** On August 31, 1987, the presiding administrative law judge (ALJ) issued an ID granting in part complainant's motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 (e) and (f)). Complainant Minigrip, Inc. and respondents Meditech International Company, Euroweld Distributing, and Polycraft Corporation filed petitions for review of the ID on the issues of patent infringement, trademark validity and infringement, domestic industry, harm to complainant, and harm to respondents. No agency comments were received.

Having examined the record, including the petitions for review and the responses thereto, the Commission has concluded that the ID does not warrant review. However, we do not adopt portions of the ALJ's reasoning with regard to the issues of: (1) Trademark validity, (2) domestic industry, and (3) effect or tendency to substantially injure the domestic industry. As to those portions, we waive, pursuant to rule 201.4(b), the provisions of rule 210.53(h) which states that a nonreviewed ID becomes the determination of the Commission. With regard to the issue of trademark validity, we note that some judicial decisions suggest that an incontestable trademark may not be challenged as *de jure* functional. With regard to the other issues, prior Commission decisions suggest that it might be appropriate in this investigation to find one domestic industry rather than two. We have determined not to review the ID on these issues since they are not outcome determining, but we will reexamine them if necessary in the final relief phase of this investigation.

**SUPPLEMENTARY INFORMATION:** Since the Commission finds that there is reason to believe that a violation of section 337 has occured, the Commission may issue (1) an order which could result in the temporary exclusion, except under bond, of the subject articles from entry into the United States and/or (2) temporary cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of temporary relief, if any, which should be ordered.

If the Commission concludes that temporary relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (4) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting temporary relief would have on the enumerated public interest factors.

If the Commission orders temporary relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. After the expiration of this period, the subject articles would also be entitled to enter the United States under bond pending completion of the Commission's investigation. The Commission is therefore interested in receiving written submissions concerning the amount of the bond or bonds which should be imposed.

*Written submissions:* The parties to the investigation and interested government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed temporary remedial orders for the Commission's consideration. The written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on Tuesday, October 13, 1987. Reply submissions on these issues must be filed no later than the close of business on Monday, October 19, 1987. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on Thursday, October 15, 1987. No further submissions will be permitted.

*Commission hearing:* The Commission does not plan to hold a public hearing in connection with the disposition of this matter.

*Additional information:* Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** on April 28, 1987 (52 FR 15568).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: October 5, 1987.

**Kennethy R. Mason,**

*Secretary.*

[FR Doc. 87–23910 Filed 10–14–87; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

**[No. MC–F–18328]**

### Leonard Green and Edward Gibbons; Continuance in Control Exemption; Foodmaker, Inc., and Trailways Lines, Inc.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** Leonard Green and Edward Gibbons, noncarrier individuals, have filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for their continuance in control of motor property carrier Foodmaker, Inc. (Foodmaker) (MC–174021) and motor passenger carrier Trailways Lines, Inc.

(Trailways) (MC–109780). Messrs. Green and Gibbons each own 5.7 percent of the outstanding shares of The Trailways Corporation, whose wholly owned subsidiary, Trailways, holds authority to operate as a motor carrier of passengers and express throughout major portions of the country. Mr. Gibbons is also a director of The Trailways Corporation. On February 22, 1985, Messers. Green and Gibbons became members of the board of directors of Foodmaker.

Under 49 U.S.C. 11343(a)(5), the Commission's prior approval is required for the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. Thus, the involved transaction is subject to our jurisdiction and can be carried out only under our regulation or an exemption from regulation. Petitioners readily acknowledge that a common control relationship commenced on February 22, 1985, when Messrs. Green and Gibbons, then shareholders of the Trailways Corporation, assumed membership on Foodmaker's board of directors. Further, petitioners acknowledge that a petition seeking exemption from prior approval of the transaction should have been filed prior to petitioners' election to Foodmaker's board. However, petitioners assert lack of awareness of the need to seek an exemption or approval of control because Foodmaker is engaged primarily in the fast food restaurant business, with only incidental regulated motor carrier operations. Thus, the common control issue was not recognized until the filing by Foodmaker of its recent application for an extension of its operating authority.

Petitioners argue that the subject transaction is of limited scope, inasmuch as Trailways and Foodmaker serve totally different markets. Likewise, petitioners argue that the disparate business focus of Trailways and Foodmaker assures that the transactions will have no adverse effect on national transportation policy objectives, and will not result in any possible abuse of market power.

In No. MC–F–18505, *GLI Acquisition Company—Purchase—Trailways Lines, Inc; and GLI Holding Company—Control—Continental Panhandle Lines, Inc.*, GLI Acquisition Company (GLI) seeks authority: (1) To purchase all of trailways's intrastate and interstate operating authority and certain other assets, including contractual interests, buses and real estate properties; and (2) to acquire Trailways' 50 percent stock interest in motor passenger carrier Continental Panhandle Lines, Inc. (Panhandle) (MC–8742). GLI's corresponding application for temporary authority to lease Trailways' operating rights, control Panhandle through management, and purchases certain of Trailways' assets has been approved by the Commission. Because of GLI transaction is pending approval, this control proceeding is not moot.

**DATES:** Comments must be received by November 16, 1987.

**ADDRESSES:** Send comments (an original and 10 copies), referring to Docket No. MC–F–18328, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Miles L. Kavaller Suite 315, 315 South Beverly Drive Beverly Hills, CA 90212.

**FOR FURTHER INFORMATION CONTACT:**

Marion E. Guyton, (202) 275–7965
TDD for hearing impaired, (202) 275–1721.

**SUPPLEMENTARY INFORMATION:**

Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: Octoer 6, 1987.

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

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–23824 Filed 10–14–87; 8:45 am]

BILLING CODE 7035–01–M

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**[Docket No. AB–167; Sub–1086X]**

## Consolidated Rail Corp.; Exemption; Discontinuance of Service in Crawford, Marion, Delaware, and Franklin Counties, OH

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue its operation by trackage rights over a 61.8-mile line of railroad owned and operated by Norfolk and Western Railway Company (N&W), as follows: from N&W milepost 62.5±, where it connects with the privately owned Bucyrus Yard lead track in Bucyrus, OH, to the southern terminus of applicant's trackage rights at milepost 0.7±, approximately 600 feet east of the east right of way line of applicant's Mount Vernon Secondary, west of Joyce Avenue in Columbus, OH.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted over other lines, and (2) no formal complaint, filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line, either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the discontinuance.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective November 14, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 26, 1987, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by November 4, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lilton R. Taliaferro, Jr., Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 5, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–23512 Filed 10–14–87; 8:45 am]

BILLING CODE 7035–01–M

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## DEPARTMENT OF JUSTICE

## Lodging a Final Judgment by Consent; Farmers Grain and Feed Co., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *September 29, 1987* a proposed Consent Decree in *United States v. Farmers Grain and Feed*

*Company and Oshkosh Grain, Inc.*, Civil Action No. 85–0–933, was lodged with the United States District Court for the District of Nebraska.

The Complaint filed by the United States alleged that the defendants had violated the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. 136, seeking a civil penalty of $1,500 assessed in an administrative action by EPA. Oshkosh Grain, Inc. is the successor corporation to Farmers Grain and Feed Company. Defendant Oshkosh Grain, Inc. has signed the decree agreeing to pay $1,000 plus costs and interest. In the decree, defendants admit all allegations of the Amended Complaint and agree to the entry of the Final Judgment. Judgment will be entered by the District Court against defendants in the amount of $1,000 plus interest at the rate of 9% per annum from June 6, 1985 to the date of this Order, plus costs of this action.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Farmers Grain and Feed Company and Oshkosh Grain, Inc.*, DOJ# Ref. 1–45–61. The propose Consent Decree may be examined at the office of the United States Attorney, District of Nebraska, P.O. Box 1228–DTS, Omaha, Nebraska 68101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth 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, Department of Justice.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–23803 Filed 10–14–87; 8:45 am]

BILLING CODE 4410–01–M

## Consent Decree in Action To Enjoin Discharge of Water Pollutants; Henry Nelkin, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 F.R. 19029, notice is hereby given that a consent decree in *United States* v. *Henry Nelkin, Inc.*, Civil Action No. 85–4478, was lodged with the United States District Court for the Eastern District of New York on September 29, 1987. The Decree requires payment of a civil penalty of $25,000. As Nelkin has ceased operations, the Decree provides that Nelkin shall conduct any future operations in compliance with any standards in effect at that time.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Henry Nelkin, Inc.*, D.J. Ref. No. 90–5–1–1–2468.

The consent decee may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and 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 $1.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–23804 Filed 10–14–87; 8:45 am]

BILLING CODE 4410–01–M

## Lodging of Consent Decree Pursuant to the Clean Air Act; State University of New York

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *State University of New York ("SUNY")*, Civil Action No. 87–CV–1317, was lodged with the United States District Court for the Northern District of New York on 9/29/87.

The proposed consent decree concerns alleged violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR 61.20, *et seq.*, (1983), and the Clean Air Act, 42 U.S.C. 7401, *et seq.*, in connection with various renovation and demolition projects at the Oswego campus of SUNY. The proposed decree requires SUNY to comply with the Clean Air Act and the asbestos NESHAP regulations. The proposed decree also requires payment of a $20,000 civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *State University of New York*, D.J. Ref. No. 90–5–2–1–1049.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of New York, 369 Federal Bldg., 100 S. Clinton St., Syracuse, NY 13260; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth St. and Pennsylvania Ave. NW., Washington, DC 20530.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–23802 Filed 10–14–87; 8:45 am]

BILLING CODE 4410–01–M

## Drug Enforcement Administration

## Claude J. Phillippe, d/b/a/ Erie Drugs Revocation of Registration

On April 3, 1987, the Deputy Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Claude J. Phillippe, d/b/a/ Erie Drugs, of 376 East 61st Street, Chicago, Illinois, seeking to revoke DEA Certificate of Registration AC3850105, and to deny any pending applications for renewal of said registration as a retail pharmacy. The statutory basis for the issuance of the Order to Show Cause was the recent controlled substance felony conviction of Claude J. Phillippe, the owner and registered pharmacist of Erie Drugs.

The Order to Show Cause was sent by way of registered mail to the pharmacy's registered location. The return-receipt indicates that the Order to Show Cause was received on June 6, 1987. There has been no response to the Order to Show Cause. Based upon Mr. Phillippe's failure to respond to the Order to Show Cause, the Administration finds that he has waived his opportunity for a hearing on the issue raised in the Order to Show Cause, and enters this final order based upon the information contained in the investigative file. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that on May 22, 1986, in the Circuit Court of Cook County, Illinois, Claude J. Phillippe was convicted, after entering a plea of guilty,

of two counts of unlawful delivery of controlled substances, in violation of I.S. Chap. 38, Sec. 56½, Subsec. 1401(d); both constitute felony convictions relating to controlled substances.

The investigation which led to Mr. Phillippe's conviction revealed that on July 2, 1985, an undercover agent for the Illinois Department of Law Enforcement visited Mr. Phillippe at Erie Drugs. During her visit, she proposed to give certain legend drugs to Mr. Phillippe in exchange for Valium, a Schedule IV controlled substance, and Tylenol #3 with codeine, a Schedule III controlled substance. Mr. Phillippe readily acquiesced to the exchange and provided the agent with 15 dosage units of Valium 5 mg. and 30 dosage units of Tylenol #3 with codeine. Mr. Phillippe gave the controlled substances to the agent in the original manufacturers' bottles.

On July 5, 1985, the same undercover agent returned to Erie Drugs in an attempt to exchange legend drugs for controlled substances with Mr. Phillippe. Again, Mr. Phillippe readily agreed to the arrangement and gave the agent 10 dosage units of Valium 5 mg. and 13 dosage units of Tylenol #3 with codeine; both were given to the agent in the original manufacturers' bottles.

On July 16, 1985, the agent visited Erie Drugs in a third attempt to exchange legend drugs for controlled substances. During that visit, Mr. Phillippe gave the agent 30 dosage units of Tylenol #3 with codeine and 13 dosage units of Valium 5 mg. As in the other instances, the drugs were given to the agent in the original manufacturers' bottles.

During each of the three exchanges, the agent never presented any orders purporting to be valid prescriptions for the controlled substances she received from Mr. Phillippe. Based upon the information provided, the Administrator determines that Mr. Phillippe clearly was dispensing controlled substances for other than legitimate medical purposes and outside the scope of his professional practice.

The Administrator has consistently held that a finding that a registrant has been convicted of a felony offense relating to controlled substances is sufficient to warrant the revocation of that registrant's DEA Certificate of Registration. See 21 U.S.C. 824(a)(2) and 21 U.S.C. 823(f)(3); see also *Fairbanks T. Chua, M.D.*, 51 FR 41676 (1986).

In this matter, the Administrator concludes that DEA Certificate of Registration AC3850105, previously issued to Claude J. Phillippe, d/b/a Erie Drugs, should be revoked, based upon his felony conviction of two counts of unlawfully distributing controlled substances. The facts underlying Mr. Phillippe's conviction demonstrate his total disregard for his responsibilities as a DEA registrant. Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AC3850105 be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective October 15, 1987.

Dated: October 8, 1987.

**John C. Lawn,**

*Administrator.*

[FR Doc. 87-23850 Filed 10-14-87; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Corps Center Assessment Advisory Committee; Meeting

A public meeting of the Job Corps Advisory Committee will be held on Thursday and Friday, November 5 and 6, 1987, commencing at 9:00 a.m., in Room N-3437 B and C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The purpose of the meeting is to initiate consideration of the Job Corps Center Assessment system developed in 1986 to rank centers for closing in the event capacity reductions in the program are necessary. This effort is in response to requests by the Congress to review the system developed and presented in 1986. The agenda will be comprised of discussions about the purpose and background of the Committee, consideration of the methodologies and rationales previously used for center assessment purposes, and to identify potential improvements.

Individuals or organizations wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Peter E. Rell, Director, Office of Job Corps, U.S. Department of Labor, Room N-4508, Washington, DC 20210. Telephone (202) 535-0550. Papers will be accepted and included in the record of the meeting if received on or before October 30, 1987.

Signed at Washington, DC, this 7th day of October 1987.

**Roger D. Semerad,**

*Assistant Secretary of Labor.*

[FR Doc. 87-23831 Filed 10-14-87; 8:45 am]

BILLING CODE 4510-30-M

### Mine Safety and Health Administration

[Docket No. M-87-203-C]

### Rayscott Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Rayscott Coal Company, Inc., HC 81, Box 858, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Mine No. 1 (I.D. No. 15-15880) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time betweens trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will

be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 16, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

*Acting Associate Assistant Secretary for Mine Safety and Health.*

Date: October 5, 1987.

[FR Doc. 87-23830 Filed 10-14-87; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules

**AGENCY:** Office of Records Administration, NARA.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATE:** Requests for copies must be received in writing on or before November 30, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

**Schedules Pending**

1. Department of the Air Force, Directorate of Administration (N1-AFU-87-18). Records relating to environmental planning and management.

2. Department of the Air Force (N1-AFU-87-37). Copies of travel records.

3. Department of the Air Force (N1-AFU-87-38). Facilitative records pertaining to Communications-Electronics.

4. Department of the Air Force (N1-AFU-87-39). Facilitative records pertaining to Autodin Switching Center Operations.

5. Department of the Air Force (N1-AFU-87-43). Records relating to child care centers and child care providers.

6. Department of Commerce, Office of the Secretary (N1-40-87-4). Comprehensive schedule for records of the Office of Management and Information Systems.

7. Department of Commerce, International Trade Administration (N1-151-87-16). General administrative records common to all offices of the International Trade Administration.

8. Environmental Protection Agency, Office of Policy, Planning, and Evaluation (N1-412-87-4). Records relating to the policy planning and evaluation programs in the agency.

9. Environmental Protection Agency, Office of Public Affairs (N1-412-87-5). Records relating to the administration of EPA's public affairs programs.

10. Federal Communications Commission, Common Carrier Bureau (N1-173-87-5). Records relating to informal complaints, carrier licenses, uniform settlement policy, and other administrative matters.

11. Federal Communications Commission, Minute Division (N1-173-87-7). Duplicate Federal Communications Commission agendas and minutes.

12. General Services Administration, Office of Administration, Office of Administrative Services (N1-269-87-4). Revision of schedule relating to General Management Program Records.

13. Department of Justice, Office of Liaison Services (N1-60-87-4). Program subject files.

14. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1-65-87-12, -13, -14, and -15). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been requested by the individual to whom it relates.

15. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1-65-87-18). Correspondence relating to court orders to expunge/destroy criminal records.

16. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1-65-87-19). Pen Register tapes (slips) containing telephone numbers collected during the course of official business.

17. National Archives and Records Administration, Office of the National Archives, Civil Archives Division (N2–423–87–1). Accessioned records of the Department of Justice, Office of Justice Programs. Videotapes maintained by the National Criminal Justice Reference Service, 1974–79.

18. Department of State (N1–76–87–1). Administrative material and duplicate copies from the General Claims Commission, United States and Germany; War Claims Arbiter; Tripartite Claims Commission; and Mixed Claims Commission. Historical records will be accessioned.

19. Department of State, U.S. Embassy Bonn (N1–84–87–2). Inventories of goods stored in Berlin.

20. Tennessee Valley Authority, Office of Corporate Services, Office Support Services Branch (N1–142–87–12). Progress reports of routine projects conducted jointly by TVA and the Civil Works Administration, 1934–5.

21. Department of the Treasury, Office of the Assistant Secretary (Enforcement and Operations), Office of Foreign Assets Control (NC1–265–80–1). Records created in the course of the administration of controls and trade restrictions on assets, located in the United States, of "blocked" countries.

22. United States Information Agency, Television and Film Service, (N1–306–87–1). Film Festivals Staff Records. Administrative, housekeeping records. (This comprehensive schedule also provides for the transfer of the Staff's historical files to the National Archives.)

Dated: October 7, 1987.

**Frank G. Burke,**

*Acting Archivist of the United States.*

[FR Doc. 87–23912 Filed 10–14–87; 8:45 am]

BILLING CODE 7515–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### Distress Terminations of Single-Employer Plans; Special Procedures Relating to the Reorganization Distress Test

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice.

**SUMMARY:** This Notice clarifies certain aspects of the distress termination process established in the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") as they relate to bankruptcy proceedings. SEPPAA creates several alternative distress tests, any one of which must be satisfied by each contributing sponsor and each substantial member of the contributing sponsor's controlled group in order for a plan maintained by the contributing sponsor to be terminated in a distress termination. In certain situations, both the bankruptcy court and the Pension Benefit Guaranty Corporation ("PBGC") may be called upon to evaluate whether to permit a distress termination. In making these determinations, the PBGC and the bankruptcy court are likely to consider many of the same factors. This creates a possibility that the PBGC and the bankruptcy court could make conflicting findings. This Notice adopts procedures to prevent such a conflict.

**EFFECTIVE DATE:** October 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Weiss, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006–1806; 202–778–8820 [202–778–8859 for TTY and TDD].

**SUPPLEMENTARY INFORMATION:** Under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001–1461, as amended by the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. No. 99–272, 100 Stat. 237 (1986) ("ERISA"), a plan may teminate in a distress termination only if each "person" who is a contributing sponsor or a substantial member of the contributing sponsor's controlled group, as defined in the statute, can demonstrate that it meets the requirements of any of the following criteria:

(1) Liquidation in bankruptcy—as of the termination date, the person has filed a petition seeking liquidation in a case under Title 11, United States Code, or under any similar law, and the case has not been dismissed;

(2) Reorganization in bankruptcy—as of the termination date, the person has filed a petition seeking reorganization under Title 11, United States Code, or under any similar law, and the case has not been dismissed and, thereafter, the bankruptcy court approves the termination;

(3) Inability to pay debts when due—without a distress termination, the person will be unable to pay debts when due and to continue in business; or

(4) Unreasonably burdensome pension costs—the costs of providing pension coverage have become unreasonably burdensome due solely to a decine in the person's covered workforce. [ERISA section 4041(c)(2)(B)] (Cases begun as liquidations and converted to reorganizations, or vice versa, as of the termination date, are included within the first two criteria.)

Under certain circumstances, the contributing sponsor or a substantial member of its controlled group may seek to qualify under more than one of the distress termination tests. One of these circumstances is presented when the contributing sponsor or a substantial member of its controlled group has filed or has filed against it a petition seeking a reorganization under Title 11 of the United States Code, or under any similar law. In such a case, this person may request approval of the termination from the bankruptcy court under the second test, or apply to the PBGC for a determination that it satisfies either the third or fourth test.

With respect to the second test, ERISA does not delineate the factors that bankruptcy courts should use in deciding whether to approve a plan termination in the context of a reorganization proceeding. The legislative history, however, indicates that the standards under sections 365 and 1113 of the Bankruptcy Code (dealing with the rejection of executory contracts and collective bargaining agreements, respectively) are applicable to the court's decision on whether to approve the termination of a pension plan. (*See* H.R. Report No. 99–453, 99th Cong., 1st Sess. 575 (1985)) Bankruptcy courts typically utilize a "balancing of the equities" test in making determinations under these sections.

The third test (inability to pay debts when due and continue in business) is a financial test that requires the PBGC to make an analysis of a number of the same factors that bankruptcy courts are likely to consider as part of their "balancing of the equities" determination. This is particularly true when the contributing sponsor is in a reorganization proceeding, because in such a case the "ability to continue in business" is essentially measured by the ability to successfully reorganize. This creates a possibility that the PBGC and a bankruptcy court could make conflicting findings as to the debtor's financial condition. The PBGC has, therefore, adopted the procedures described below in order to prevent such a conflict between it and a bankruptcy court.[1]

When a contributing sponsor or a substantial member of the contributing sponsor's controlled group requests approval of the plan termination from a bankruptcy court under the reorganization test, the PBGC normally will enter an appearance in that

[1] The fourth test (unreasonably burdensome pension costs) does not involve factors that are closely related to the factors considered by the bankruptcy courts. Accordingly, this test does not present the same possibility of conflicting results.

proceeding to request the bankruptcy court to make certain specific findings. The PBGC will ask the court either to make a finding as to whether, but for distress termination, the contributing sponsor or substantial member of its control group will be unable to pay debts when due and continue in business, or to state that it is unable to make any such findings. In these proceedings, the PBGC will provide the court with any information it has that may be germane to the court's ruling. If the bankruptcy court makes a finding as to the debtor's ability or inability to pay debts when due, and upon the bankruptcy court's order becoming final and non-appealable, the PBGC commits itself to be found by the finding.

If the contributing sponsor or a substantial member of the contributing sponsor's controlled group requests a determination from the PBGC under the third test and also requests (either prior thereto or after) approval of the termination by the bankruptcy court, the PBGC will defer action on the request until the bankruptcy court makes its determination. If the contributing sponsor applies to the PBGC under the third test and the PBGC determines that the distress test is not met, and the contributing sponsor thereafter requests the bankruptcy court's approval of the termination, the PBGC will advise the court of its determination and make its administrative record available to the court for its analysis.

By adopting these procedures, the PBGC hopes to minimize duplicative efforts and expedite the analysis of the financial information submitted to justify plan termination. Moreover, the PBGC anticipates that these procedures will facilitate the development of consistent decision making in this area and better promote the policies behind Title IV of ERISA.

Issued at Washington, DC, this 7th day of October, 1987.

**Kathleen P. Utgoff,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87-23786 Filed 10-14-87; 8:45 am]

BILLING CODE 7708-01-M

## PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

### Meeting

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday, October 27, and Wednesday, October 28, 1987, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Washington Room B, on the Second Concourse at 9:00 a.m. on October 27, 1987. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9:00 a.m. in Washington Room A, also on the Second Concourse, the same day.

The Full Commission will meet at 1:30 p.m. in Washington Rooms A and B, on the Second Concourse, October 27, and in the same rooms on October 28, 1987, at 9:30 a.m.

All meetings are open to the public.

**Donald A. Young,**

*Executive Director.*

[FR Doc. 87-24018 Filed 10-14-87; 8:45 am]

BILLING CODE 6820-BW-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-25000; Filed No. SR-CBOE-87-42]**

### Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Addition of Options at a Strike Price up to 100 Points Below the Current Index Value of the Standard & Poor's 500 Stock Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on September 14, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Text of the Proposed Rule Change**

Additions are italicized; there are no deletions.

Terms of Option Cotnracts

Rule 24.9 No change

. . . Interpretation and Policies:

.01 No change

a.–e. No change

*f. In the options on the Standard & Poor's 500 Stock Index (SPX or NSX), the Exchange may add one or more series of option contracts at a strike price up to 100 points below the current index price. Such series may only be added on the expiration cycles of March, June, September and December.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the palces specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change allows the Exchange to open for trading options at a strike price up to 100 points below the current index value of the Standard & Poor's 500 STock Index ("SPX" and "NSX", hereinafter collectively referred to as "SPX"). The Exchange believes that this will enable market participants to have a greater range of trading and hedging opportunities in SPX.

SPX is a market with a high degree of institutional activity and these sophisticated market participants believe that they can use a greater range of strike prices than can the typical retail investor. For example, the deep-in-the-money calls will provide a way for a buyer or seller to participate point-for-point in a very substantial market move, as has occurred in the past six months. Because SPX has a European exercise provision, a seller of a deep-in-the-money call also avoids the risk of early exercise.

The Exchange also recognizes that this will make available far out of the money puts, which have a relatively lower possibility of coming into the money before expiration. To that extent, the Exchange has cautioned its member firms that these options, particularly the far out-of-the money puts, are being made available to allow sophisticated market participants a greater range of trading and hedging strategies and that trading activity for customer accounts in the far out-of-the money puts will be closely scrutinized by the Exchange as to the suitability and propriety of the trades for the customers in question.[1]

The Exchange believes that the proposed rule change is consistent with the provisions of the Act and, in particular, section 6(b)(5) thereof, in that the rule change is intended to increase

[1] CBOE Exchange Bulletin, Volume 15, Number 38 (September 23, 1987).

market liquidity by providing sophisticated market participants with a greater range of availability options series for trading.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that this proposed rule change will impose any burden on competition.

*(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.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 5, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 7, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-23886 Filed 10-14-87 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25001; File No. SR-CBOE-87-45]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1987 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange proposes to make effective, pursuant to CBOE Rule 2.22, a revenue-neutral trade match fee system to encourage clearing firms to provide timely and accurate input to the Exchange's trade match process. To encourage timely input, the Exchange will use the input cutoff times based on daily reported volume in order to define categories of early and late input for a particular day. For each clearing firm, the type [1] and number of transactions will be recorded by time slot. A weighting factor will be applied to each time slot, and a formula will be applied to determine each firm's monthly bill based on its performance. To encourage accurate input, a firm causing an outtrade will have to submit a correction, which will incur a charge.

The Exchange states that the purpose of this trade match fee system is to improve clearing firm performance by encouraging: (1). Early submission to all trade match passes, (2) use of corrective transactions instead of combinations of deletes plus adds, (3) strict adherence by member firms to the second pass schedule of the Exchange's trade match process, which is critical to starting the Options Clearing Corporation process, and (4) accurate input.

As the foregoing rule is concerned solely with Exchange fees, it has become effective immediately pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in caption above and should be submitted by November 5, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 7, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-23887 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

[1] *E.g.*, adds, deletes or changes.

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**[Release No. 34-25002; File No. SR-DTC-87-9]**

## Self-Regulatory Organizations; Depository Trust Co.; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on June 2, 1987, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. On September 15, 1987, DTC amended the rule change by submitting procedures relating to the proposed rule change. The proposal would enable DTC Participants to change, by automated means, the frequency with which they receive future dividend payments on Variable Mode Preferred (VMP) and

Unit Investment Trust Securities (UIT). The Commission is publishing this notice to solicit comment on the proposed rule change.

The new service is called a Change of Mode Payment ("CMOP") Service. DTC states in its filing that CMOP will enable Participants to change, during specific periods, the frequency with which they receive dividend payments. In accordance with the terms of the security, dividend payments may be made monthly, quarterly, semi-annually, annually, or on another regular frequency. Only certain UIT and VMP stock issues are eligible for the CMOP Service. Fees for the CMOP service will be the same as fees for conversions.

In order to use the CMOP Service, a Participant would communicate the CMOP instructions to DTC by automated means through DTC's Participant Terminal System (PTS). Due to provisions in the documents which created the UITS and VMPs, participants may submit CMOP changes only during certain specified time periods. If a participant attempts to make a change outside of the permissible time periods, PTS will reject the transaction and display an error message. Participants receive an additional notification of transactions not completed by comparing the transactions they submitted with the completed transactions reported on their daily activity statement.

In addition to instructing DTC about a VMP change, a participant who wants to make a VMP change must directly notify the VMP remarketing agent of the change two business days before the dividend payment date. Each afternoon DTC submits that day's CMOP VMP changes to the appropriate VMP remarketing agents. The VMP remarketing agents have until the close of business to inform DTC of changes that must be reversed because the participant failed to notify it of the change at the appropriate time. If a change must be reversed, or is rejected for another reason DTC will notify the participant's coordinator by telephone, and send the participant a written notice of the adjustment.

After a participant has completed a valid CMOP instruction, DTC will begin processing in accordance with the instruction. Because UITs and VMPs are FAST issues, DTC transmits the instructions to the FAST transfer agent via DTC's Computer-to-Computer Facility.[1]

[1] FAST, which stands for Fast Automated Securities Transfer, provides an expeditious method for transferring certificates. Under the FAST program, DTC leaves certificates with the appropriate transfer agents (TA). When a FAST issue is transferred, DTC does not need to withdraw it from its vault, submit it to the TA for processing, receive a new issue from the TA, and place the new issue in the vault. Instead, DTC merely notifies the TA of the change which is to be made; processing occurs more quickly because the FAST certificates are already in the TA's custody.

DTC believes the rule change is consistent with the requirements of the Act because it will eliminate the need for Participants to withdraw certificates from DTC, exchange them at the transfer agent's office for certificates with the new payment frequency, and then deposit new certificates at DTC. In addition, DTC believes the proposed rule change would facilitate the timely settlement of these transactions, reduce fails, and decrease financing costs.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission 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, all written communications relating 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 under 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR–DTC–87–09 and should be submitted by November 5, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 7, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–23888 Filed 10–14–87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34–25003; Filed No. SR–MSTC–87–5]**

## Self-Regulatory Organizations; Midwest Securities Trust Co., Order Approving Proposed Rule Change

The Midwest Securities Trust Company ("MSTC") on March 27, 1987, filed a proposed rule change with the Securities and Exchange Commission ("Commission") under section 19(b) of the Securities Exchange Act of 1934 ("Act"). MSTC filed an amendment to the proposal on August 11, 1987. The proposal, as amended, would authorize MSTC to charge a Participant for the failure to eliminate any negative balance remaining in such Participant's securities account 24 hours after notification by MSTC of the existence of the negative balance. The Commission published notice of the proposal in the **Federal Register** on September 8, 1987, to solicit public comment.[1] No public comment was received. This order approves the proposal.

### I. Description

The proposal amends MSTC Article II, Rule 1, Section 1 to authorize MSTC to charge a Participant for the failure to eliminate any negative balance remaining in the Participant's securities account. Under the proposal, if a negative balance remains 24 hours after MSTC has notified a Participant of its existence, MSTC will be authorized to charge the Participant 130% of the market value of equity, or face value of debt (municipal or corporate) securities which constitutes the negative balance. The amount will be placed in a separate escrow account and will be returned to the Participant after the Participant delivers substitute securities to its MSTC account (by deposit or book-entry movement).

### II. MSTC's Rationale

MSTC states that the proposed rule change is consistent with the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions, as well as the safeguarding of securities and funds within MSTC's control. MSTC states that when faced with an unpaid negative balance, MSTC's current rules authorize MSTC only to buy-in securities to eliminate the negative balance. While in some instances the procedure is adequate to limit MSTC's exposure, the procedure is inappropriate in other instances, for example, when a limited market exists for a security which is the subject of a negative balance. MSTC believes that the proposal will encourage Participants to take steps to eliminate a negative balance, even in instances where a limited market for the security exists, and will further protect MSTC should the Participant become insolvent before it eliminates the negative balance.

[1] *See* Securities Exchange Act Rel. No. 24685 (August 28, 1987) 52 FR 33892.

### III. Discussion

The Commission believes that MSTC's proposal is consistent with Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions while ensuring the safeguarding of funds and securities in MSTC's custody and control. For the reasons discussed below, the Commission is approving MSTC's proposal.

MSTC's proposed outstanding negative balance charge will provide protection to MSTC and it Participants. Most outstanding negative balances develop primarily as a result of deposit rejects (securities submitted to MSTC for deposit which are not in good deliverable form), partial calls in redemption processing and miscellaneous account position adjustments. The existing buy-in procedures protect MSTC only to the extent that the same or similar securities are available for purchase. In certain situations, however, a buy-in of securities may entail significant delays. For example, a Participant depositing securities in a thinly traded issue into its account at MSTC is immediately credited with the securities and may use the position. If the securities, when presented by MSTC to the transfer agent for transfer into MSTC's nominee name, do not clear transfer and MSTC subsequently rejects the deposit, the Participant's account will incur a negative balance. The Participant (and MSTC) may not be able immediately to replace the securities by buying-in because the issue is thinly traded. The negative balance charge is designed to increase MSTC's protection in the event the Participant becomes insolvent after the negative balance charge is made and before the Participant eliminates the negative balance.

The proposed 130% negative balance charge will induce Participants to eliminate the negative balance as quickly as possible. The Commission believes that the negative balance charge also will encourage Participants to examine their procedures and maintain a higher quality control to prevent or reduce deposit rejects and therefore avoid creating outstanding negative balances.

### IV. Conclusion

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that MSTC's rule change (File No. SR MSTC 87–5) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 7, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–23889 Filed 10–14–87; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. 34–24997; File No. SR–NSCC–87–8]**

## National Securities Clearing Corp.; Proposed Rule Change; Mutual Fund Settlement, Entry and Registration Verification ("Fund/SERV") Service

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 September 16, 1987 NSCC 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 NSCC. 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 proposed rule change would adopt NSCC's Fund/SERV Service as a permanent service of NSCC at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

NSCC originally filed a rule change with the Securities and Exchange Commission ("Commission") in December, 1985, in order to operate Fund/SERV. By order dated February 20, 1986, the Commission granted temporary approval to the Fund/SERV rules, allowing NSCC to establish the service on a pilot basis. In April, 1986, after having experience operating Fund/SERV on a pilot basis, NSCC filed an additional rule change making various modifications to the procedures and membership standards for Fund/SERV. By order dated February 10, 1987, the Commission approved that filing and authorized the continuation of Fund/SERV through January 31, 1988. The purpose of this proposed rule change is to adopt Fund/SERV as a permanent service of NSCC.

Since the inception of Fund/SERV in March, 1986, with one mutual fund and two broker-dealers, Fund/SERV has expanded to where there currently are 18 funds participating and 27 broker-dealers participating. The volume of transactions processed by the system also has grown. At its peak, in April, 1987, volume averaged over 7,500 confirmed trades a day. Even with a general downturn in the mutual fund industry, Fund/SERV currently is averaging over 4,000 transactions a day. Similarly, average daily dollar value of confirmed trades has increased to a current average of approximately $100 million, with a monthly high average of over $190 million a day in April, 1987.

As shown by its growth, Fund/SERV has achieved widespread industry acceptance as the central processing system for mutual fund transactions. There have been no operational problems in providing the service; indeed, NSCC has been developing enhancements to Fund/SERV as the service grows (*See* SR-NSCC–87–7). NSCC has been developing enhancements to Fund/SERV as the service grows (*See* SR-NSCC–87–7). NSCC currently is developing plans to increase participation in Fund/SERV by making it more attractive for smaller broker-dealers who currently are not members of NSCC. In addition, NSCC is developing plans to offer additional services with respect to mutual funds. In light of these developments, NSCC believes that it would be appropriate for the Commission to approve Fund/SERV as a permanent service of NSCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NSCC has worked with the mutual fund industry and NSCC's participants in developing Fund/SERV. Formal comments on the proposed rule change, however, have not been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason 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 approved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 5, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: October 6, 1987.

[FR Doc. 87-23882 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-24999; File No. SR-NASD-87-37]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Implementing a Late Fee for Certain Subscribers

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 October 2, 1987, the National Association of Securities Dealers, Inc. ("NASD") 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 self-regulatory organization has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and corresponding Rule 19b-4(e), which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the 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") hereby files a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to establish a late fee that would be levied against delinquent subscribers receiving NASDAQ/National Market System Last Sale Information ("NASDAQ/NMS Last Sale Service") through an authorized vendor. The late fee will equal one and one-half percent (1½%) per month of the unpaid balance commencing forty-five (45) days after the invoice date. Prior to this filing, no late fee had ever been authorized respecting subscribers delinquent in paying for NASDAQ/NMS Last Sale Service. The NASD will implement the late fee prospectively in accord with the existing subscriber agreement for NASDAQ/NMS Last Sale Service.

**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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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*

This filing is intended to effect the Market Services, Inc., Board's determination to impose a late fee against subscribers delinquent in paying for NASDAQ/NMS last sale information obtained through authorized vendors. To the extent that vendors have assumed contractual responsibility for collection and remittance of subscriber fees, such late fee would also apply. Historically, no late fee had ever been levied in connection with this or any other service provided by MSI. The new fee will apply equally to delinquent fees attributable to professional subscribers serviced by vendors. Lastly, the late fee's application is limited to MSI's provision of the NASDAQ/NMS Last Sale Service.

The NASD anticipates that adoption of the late fee will curb the incidence of delinquencies. In this regard, it should be noted that timely receipt of subscriber fees is a contractual precondition to obtaining the last sale information. It is also important to the NASD's funding of the facilities and operations needed to provide this service as well as various automation enhancements that ultimately benefit subscribers and the investing public. Hence, sound business practice and public policy considerations both support the adoption of this late fee.

Section 15A(b)(5) of the Act requires the equitable allocation of reasonable fees among persons accessing data services offered by the NASD. Although related to the NASDAQ/NMS Last Sale Service, the late fee becomes due only when the subscriber is dilatory in paying the prescribed rate for this service. Hence, it is entirely within a subscriber's control to avoid incurrence of the late fee. However, every subscriber who becomes delinquent incurs the identical pecuniary obligation. This result is consistent with the equitable allocation standard articulated in section 15A(b)(5) of the Act.

The NASD believes that the magnitude of the late fee is reasonable, and that its imposition will offset certain additional costs traceable to collection of delinquent payments from the affected universe of subscribers. Further, the late fee's magnitude is believed sufficient to provide an economic incentive for subscribers to pay NASDAQ/NMS Last Sale Service fees in a timely fashion. Based on this rationale, the NASD submits that this

late fee satisfies the reasonableness requirement of section 15A(b)(5) of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD asserts that no competitive burden will result from the imposition of a late fee on subscribers delinquent in paying the established rates for NASDAQ/NMS Last Sale Service. The late fee will apply uniformly to all delinquent subscribers receiving this service through vendors. Incurrence of the late fee is a matter entirely within each subscriber's control and timely payment obviates liability for the fee. Hence, the fee's application will not unfairly burden a subscriber's continued access to NASDAQ/NMS last sale information. Finally, because the proposed fee addresses delinquent payments by a specific class of subscribers, it has no adverse effect upon any vendor's access to NASDAQ/NMS last sale information nor upon a vendor's ability to service a particular subscriber.

*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.

**III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 NASD. All submissions should refer to the file number SR–NASD–87–37 and should be submitted by November 5, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority: 17 CFR 200.30–3(a)(12).

Dated: October 7, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–23819 Filed 10–14–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–24985; File No. SR–NYSE–86–21]**

## Self-Regulatory Organizations; Order Approving Proposing Rule Change by the New York Stock Exchange, Inc. Relating to a Revision of the List of Exchange Rule Violations and Applicable Fines

The New York Stock Exchange, Inc. ("NYSE") submitted, on July 10, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder, to revise the list of NYSE rules eligible to be considered pursuant to the NYSE's minor rule violation plan.[3] In particular, the purpose of the NYSE proposal is to include, within the minor rule violation plan, certain rules which are administered by the NYSE's Member Firm Regulation and Enforcment and Regulatory Standards Divisions.

In 1984, the Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[4] The Commission previously approved such a plan filed by the NYSE.[5] The approved plan relieves the NYSE of the current reporting requirement imposed under section 19(d)(1) for violations listed in NYSE Rule 476A. The NYSE plan, as embodied by Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, or member approved person, or registered or non-registered employee of a member organization for a violation of the delineated rules by issuing a citation with the specified penalty. The respondent can either accept the penalty, or force a full disciplinary hearing on the matter. Fines assessed pursuant to Rule 476A in excess of $2,500 are not considered pursuant to the plan and must be reported in a manner consistent with the current reporting requirements of section 19(d)(1).

The five remaining proposed NYSE rules [8] are different in nature from the list of rules already included under Rule 476A and the above-mentioned rules in that these rules generally relate to the member's relationship with its customers and directly relate to important investor safeguards. In particular, Rules 451 and 452 require NYSE members to transmit proxy materials to beneficial owners of stock and establish procedures for delivery proxies by a member organization for stock registered in its name. Strict compliance with these two rules is necessary to ensure that the member organization is in compliance with Section 14 of the Act and the rules and regulations promulgated thereunder.[9] Likewise, failure to adhere to the requirements contained in Rule 726, mandating delivery to a customer of the current Options Disclosure Document at or prior to approval of the customer's account, also effects compliance with Rule 9b–1 under the Act.[10] Further, the

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[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b–4 (986)

[3] *See* NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"). Included within Rule 476A is the list of Exchange rules whose violations may be reported pursuant to the NYSE's minor rule violation plan. The Commission notes that it simultaneously is approving amendments to the NYSE minor rule violation plan. *See* Securities Exchange Act Release No. 24986.

[4] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 409 FR 23838. Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2), of Rule 19d–1, any disciplinary acton taken by the SRO for violation of an SRO rule that has been designated a minor rule pursuant to the plan shall not considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated, minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to immediate, basis. *See* note 7 *infra* (detailing content of quarterly reports filed pursuant to the NYSE plan).

[5] Securities Exchange Act Release No. 22415 (September 14, 1985), 50 FR 38600.

[8] *See* NYSE Rules 408(a), 432(a), 451, 452 and 726.

[9] 15 U.S.C. 78m (1976).

[10] 17 CFR 240.9b–1 (1986).

requirements contained in Rule 408(a) represent essential customer protection safeguards against unauthorized trading, and the requirements of Rule 432(a) serve as part of an overall scheme of margin regulation designed to protect the markets, and specifically the margin purchaser, by preventing the purchase of securities with insufficient margin.[11]

In adopting Rule 19d-1, the Commission noted that the rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[12] In promulgating paragraph (c) of the rule,[13] the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The various SROs have since realized that the inclusion of rules under a minor rule violation plan not only can reduce reporting burdens but also can make their disciplinary systems more efficient. The Commission however, expressed concern, when promulgating the rule, that the SROs would use that provision for the disposition of increasingly more significant violations. Indeed, the Commission specifically rejected a recommendation, made by the Chicago Board Options Exchange ("CBOE"), to raise the fine ceiling to $10,000, in an attempt to limit the use of these plans to "matters of minimal regulatory concern."[14] To ensure further that plans pursuant to Rule 19d–1(c) would be used for intended purposes only, the Commission retained the authority to restrict the categories of violations and impose any terms or conditions that it saw necessary.[15] Specifically, the Commission remains unconvinced that the inclusion of rules that are not basically technical or objective in nature are appropriate for a minor rule violation plan.

The Commission, therefore, is concerned that violations of the above cited five rules may present more than "minimal regulatory concern." At the same time, however, the Commission recognizes that the inclusion of such rules under the NYSE's 19d–1 plan could have positive results, especially in the area of compliance. According to the NYSE, inclusion of these rules will provide an effective alternative response to a rule violation when the initiative of full disciplinary proceedings is unsuitable because such a proceeding would be more costly and time-consuming in view of the minor nature of the particular violation if not the category of violation. The NYSE claims that, presently, members are aware that lesser violations of the five rules probably will result only in a verbal warning or letter of caution and not full disciplinary proceedings. Accordingly, the NYSE believes that its ability to enforce compliance with these rules will increase with the ability to issue summary fines for these violations.[16]

In effect, the NYSE argues that, even though the categories of requirements covered by the five rules provide important investor safeguards, any particular violation of such a rule may or may not rise to the level which would justify a full discipinary proceeding. Thus, in the NYSE's view, because it retains the discretion to bring such a full disciplinary proceeding, adding these rules to its minor disciplinary plan only will enhance, rather than reduce, its enforcement capabilities regarding such rules.

While the Commission is not persuaded the residual availability of full disciplinary proceeding always will justify placing a rule within the minor disciplinary plan, it recognizes that the issue of whether the inclusion of these rules within the minor disciplinary plan will provide a net benefit to the NYSE's enforcement efforts is ultimately a question of how the program is implemented. If the minor disciplinary characterization is used in a manner which is sensitive to the underlying goal of Rule 19d–1, including these rules within the plan may enhance the NYSE's compliance effects. The Commission therefore has determined that, in order to balance the regulatory needs and reqirements of the Commission as set forth in section 19(d), and the compliance goals and reporting burdens of the NYSE, inclusion of these rules under the NYSE's minor rule violation plan should be approved for a pilot period of two years. During that time, the Commission will examine whether summary disposition and quarterly reporting of such vilations allows respondents sufficient due process protections and the Commission sufficient information by which to carry out its oversight responsibilities concerning the enforcement and disciplinary activities of the SROs.[17] To aid in that examination, the NYSE has agreed to submit two reports to the Commission on compliance activities concerning these five rules: one report submitted at the midpoint of the pilot and the other prior to the pilot's expiration.[18]

The two reports submitted by the NYSE concerning these five rules will include considerably more detail than the quarterly reports presently submitted by the NYSE. First, these reports should include statistics on the number of violations of the five rules handled pursuant to the NYSE's minor rule plan. Second, the following information in connection with each violation must be reported, although it should be noted that the Commission may, from time to time, request additional information: (1) The name of each violator; (2) a description of the circumstances under which the violation occurred; (3) the resulting sanction; (4) whether this is a first or repeat offense in this category by the respondent; (5) whether the violation led to any further investigation or violations; and (6) an analysis by the NYSE of how these cases might have been treated if not for the pilot program (*i.e.*, verbal or written caution or full disciplinary proceeing). Third, these reports must include statistics and descriptions of those cases that the NYSE attempted to bring under its minor rule plan, but the respondent requested a hearing. Fourth, these reports must contain an analysis of the overall compliance process for these five rules. Moreover, as the Commission plans to monitor this pilot program through its inspections program and the Rule 19d–1 reporting requirement, the NYSE should retain, consistent with section 17(a) of the Act,[19] in connection with any violation of these five rules, all back-up documentation and analysis leading to either a Rule 19d–1 filing or a more detailed exchange investigation in any compliance capacity.[20]

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[11] *See, e.g.*, Report of Senate Committee of Banking and Currency, Stock Exchange Practices, S. Rep. No. 1455, 73d Cong., 2d Sess. 11 (1934).

[12] *See* Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36411.

[13] *See* note 4, *supra*.

[14] *See* Securities Exchange Act Release No. 21013, 43 FR 23638. Specifically, the Commission noted:

In our view, sanctions of that level [$10,000] rarely would involve matters of minimal regulatory concern. Instead, they either involve isolated infractions of significant rules or repeated violations of less significant rules which warrant a stringent sanction. The [Commission] believes that it is important that the Commission be informed on a timely basis of infractions in either situation.

[15] *Id.*

[16] *See* File No. SR-NYSE-86-21.

[17] Reporting of violations by SROs to the Commission is an essential means of SRO oversight by supplementing the information obtained through inspections.

[18] *See* telephone conversation between Rudy Schriber, NYSE, and Stephen Luparello, Staff Attorney, Division of Market Regulation, dated August 31, 1987.

[19] 15 U.S.C. 78q(a).

[20] The Commission also notes that it retains the right to revoke any part or the entire pilot program prior to its expiration if it determines that such an action is necessary in order to further or protect the public interest (*i.e.*, if the absence of quarterly reporting leads to deficiencies in NYSE surveillance or disciplinary procedures).

Based on the above, the Commission finds that the proposed amendments, with the inclusion of the pilot program, are consistent with the requirements of the Act, and specifically Sections 6 and 19 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) under 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.

**Jonathan G. Katz,**

*Secretary.*

Dated: October 5, 1987.

[FR Doc. 87-23820 Filed 10-4-87; 8:45 am]

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**[Release No. 34-24986; File No. 4-284]**

## Self-Regulatory Organizations; Order Approving Amendment to Plan Filed by New York Stock Exchange for Reporting Minor Disciplinary Rule Violations

The New York Stock Exchange, Inc. ("NYSE") submitted, on July 10, 1986, copies of a proposed amendment to its minor rule violation plan, pursuant to section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c)(2) thereunder.[1] The Commission previous by approved a minor rule violation plan filed by the NYSE, which relieves the Exchange of the prompt reporting requirements of Rule 19d-1 for violations of rules listed pursuant to the plan.[2]

The amendment adds violations of a variety of NYSE rules to the list of rules subject to the plan.[3] Specifically, the NYSE has proposed to add the following rules, administered by the Exchange's Member Firm Regulation/Enforcement and Regulatory Standards Divisions, to its minor rule violation plan: Rules 312(a), 312(b), 312(c), 313, 345.13, 346(c) 351, 421, 440F, 440G, 440H, and 706 (rules concerning violations of Exchange reporting requirements); Rules 312(h), 312(i), 342(c), 342.10, 382(a), and 791(c) (rules concerning violations of Exchange approval requirements); Rules 345.18, 410, 432(a) and 440 (rules concerning violations of record retention requirements); Rules 343 (violations relating to member organization office-sharing arrangements); Rule 387 (violations of COD/POD transaction requirements); Rules 407 (violations of requirements for transactions of employees of the Exchange, member organizations, and certain non-member organizations); Rule 408(a) (violations of requirement that written authorization be obtained for discretionary power over customer accounts); Rules 451 and 452 (violations of requirement relating to transmission of proxy material and authorizing the giving of proxies); Rule 726 (violations of option disclosure document and prospectus delivery requirement); and Rule 781 (violations of allocation of exercise assignment notices). In approving the amendments to the plan, the Commission has determined that the inclusion of five of these rules [4] should be approved conditionally, subject to a two-year pilot program.[5]

Violations of the above-cited rules will be reported to the Commission in a manner identical to all other violations subject to the minor rule violation plan. Such reports include: (1) A quarterly report listing the NYSE internal file number for the case; (2) the SEC file number; (3) the name of the individual or member organization; (4) the nature of the violation; (5) the specific rule provision violated; (6) the date of violation; (7) the fine imposed; (8) an indication of whether the fine is joint and several; (9) the number of times the violation has occurred; and (10) the date of disposition.[6] The five conditionally approved rules will have additional reporting requirements during the course of the pilot program.[7]

Notice of the proposed amendment was given by the issuance of a Commission release (Securities Exchange Act Release No. 24483, May 19, 1987) and by publication in the **Federal Register** (52 FR 20182, May 29, 1987). No comments were received regarding the proposal.

The Commission finds that the proposed amendments to the NYSE minor rule violation plan are consistent with the requirements of sections 6 and 19 of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Rule 19d-1(c)(2) under the Act, that the proposed amendments, with the inclusion of the pilot program, are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-23817 Filed 10-14-87; 8:45 am]

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**[Release No. 34-25004; File No. SR-PSE-86-10]**

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On June 12, 1986, the Pacific Stock Exchange, Inc., ("PSE") submitted a proposed rule change to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, which would permit Order Book Officials ("OBO") to disclose to exchange members the price and number of contracts on the limit order book ("Book") that are bid below and offered above the displayed market quote.

The proposed rule change was noticed in Securities Exchange Act Release No. 23603, September 9, 1986. No comments were received on the proposed rule change.

The proposed rule change will permit a PSE Member to request from an OBO the price and number of contracts which are bid below and/or offered above the Book information displayed pursuant to PSE Rule VI, section 69. In order to receive the information from the OBO, however, the Member must openly disclose to the trading crowd the identity of the Member or Member

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[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838. The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[2] *See* Securities Exchange Act Release No. 22415 (September 15, 1985).

[3] The list of rules subject to the plan is contained in NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"); Securities Exchange Act Release No. 21688 (January 25, 1985) (approving NYSE Rule 476A).

[4] NYSE Rules 408(a), 432(a), 451, 452 and 726.

[5] *See* Securities Exchange Act Release No. 24985.

[6] The fine schedule under Rule 476A is as follows: (1) First offense, $500 for an individual and $1,000 for a member organization; (2) $1,000 for an individual and $2,500 for a member organization; and (3) $2,500 for an individual and $5,000 for a member organization for subsequent offenses. Fines in excess of $2,500 are not covered by the plan and must be reported promptly to the Commission.

[7] These reporting requirements are described in detail in Securities Exchange Act Release No. 34-24985.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

Organization for whom he requests the information.

The PSE states that the proposed rule change is designed to provide additional information to crowd participants and/or their clients and customers so they can better handle large orders and facilitate liquidity. The PSE also notes that while most interest probably will focus on Book size and price information nearest to the present bid and offer, price and aggregate size of Book orders further away from the current Book quote may prove useful to market participants. The PSE proposal also will permit the same access to Book information that is provided for in the Chicago Board Options Exchange ("CBOE") Rules, approved by the Commission in October, 1985 (SR-CBOE-85-30, Release No. 34-22582). Unlike the CBOE provision, however, the PSE proposal would require the member seeking information from the OBO to give up to the trading crowd the name of the firm for which the request is being made. The proposal also allows the PSE to limit crowd access to the Book where appropriate. For example, in circumstances where fast market conditions exist and where the Exchange is aware of a possibility that the information could be misused, access to Book information may be limited.

The Commission finds that the proposed rule change is consistent with the Act and in particular the requirements of Section 6 and the Rules and Regulations thereunder in that the proposed rule change will provide additional information to crowd participants and/or their clients and customers which will help them to establish the best available price for handling large orders. In addition, accessibility to information relating to the size and price of book orders (supply and demand information involving public customers) should assist market makers in determining price levels to buy and sell options. Similarly, the Commission believes that this knowledge should be useful to market participants handling large customer orders and will facilitate hedging and other trading strategies, thereby increasing overall market liquidity. The Commission also believes it is necessary and appropriate for the PSE to have the authority to limit crowd access to the Book in order to limit possible disclosure difficulties and information abuse.

The Commission also believes that the requirement that an OBO not disclose requested information until the requesting member supplies the name of the member or member organization for whom the request is being made is acceptable. The PSE has determined that, in return for receiving Book information, a member should cause more market information (i.e., the identity of an entity interested in buying or selling a specific series) to be made public. Thus, a member that did not want to disclose the identity of a customer would only be prohibited from requesting Book information that has heretofore been non-public. The Commission also notes that this is similar to a rule of the PSE's Options Floor Procedure Committee adopted in 1976 providing for the disclosure, by a floor broker, of the name of the member organization for whom he is acting when he requests the size of the market (See Options Floor Procedure Advice Rule D-9(1)).

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: October 8, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-23890 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-16042; 813-81]**

## Elfun Global Fund; Application for Exemption

October 8, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

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*Applicant:* Elfun Global Fund ("Applicant" or "Fund").

*Relevant 1940 Act Sections:* Exemption requested under Section 6(b) from the provisions of sections 10(a), 13(a)(4), 15(a), 15(c), 16(a), 30(d) and 32(a).

*Summary of Application:* Applicant seeks an order exempting it from certain shareholder voting requirements, permitting annual reports to unitholders and permitting all of its trustees to be officers or employees of General Electric Company ("GE").

*Filing Date:* The application was filed on July 8, 1987 and amended on October 6, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 292 Long Ridge Road, Stamford, Connecticut 06904.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Pickholz, Staff Attorney, (202) 272-3046, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. The Fund is a trust created pursuant to an agreement among the Fund's trustees ("Trustees") dated May 15, 1987. It is a diversified, open-end, management investment company, and is so organized as to meet the requirements for an "employees' securities company" within the meaning of section 2(a)(13) of the Act. The Fund has not yet commenced operations.

2. Purchase of units of the Fund ("Fund Units") may be made by regular and senior members of the Elfun Society, on behalf of trusts established for the exlusive benefit of such members and by General Electric Company ("GE") and its subsidiary and controlled companies. Regular members of the Elfun Society are selected from among the higher level exempt-salaried employees of GE and its subsidiary and controlled companies and senior members are former regular members who have retired from these companies. Fund Units may also be purchased by the spouse and children of any eligible living Elfun Society member or by the unremarried surviving spouse of a former Elfun Society member and by the trustees of certain profit-sharing trusts

[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 200.30-3(a)(12) (1985).

hereafter created by GE and by members of the GE Board of Directors. As of May 1, 1987, there were approximately 18,096 regular members and 8,964 senior members of the Elfun Society.

3. The objective of the Fund is to seek as high a level of long-term growth and future income as is available through investment in foreign and domestic securities over a long-term period consistent with a degree of risk determined by the Trustees to be acceptable and consistent with prudent investment management and preservation of capital. The fund may enter into forward foreign currency exchange contracts, foreign currency futures contracts and options on foreign currency for hedging purposes in order to minimize the risk from adverse changes in the relationship between the U.S. dollar and foreign currencies. The Fund may also, for hedging purposes, purchase foreign currencies in the form of bank deposits as well as other foreign money market instruments, and employ stock index futures and options and interest rate options and futures to protect its foreign and domestic portfolios.

4. The Trustees have contracted for investment management services with General Electric Investment Corporation ("GEI"), a wholly-owned subsidiary of GE which is registered as an Investment Adviser with the Securities and Exchange Commission. GEI is subject to removal by the Trustees at any time, without peanlty, on sixty days written notice. The contract for investment management provies that the appointment of the investment manager is subject to annual review by the Trustees.

5. The Fund's five Trustees are all officers or employees of GE who have been assigned to the operations of GEI. The Trustees do not receive any compensation from the Fund for serving as Trustees, although the Fund will be required to reimburse GEI for the portion of the remuneration such persons receive from GE which is allocable to the time they spend on Fund matters in their capacity as GEI employees. Although GEI and GE provide various services to the Fund and are reimbursed for the reasonable costs of providing such services, no element of profit is included in such charges.

6. The Trustees, GEI, and GE all have a very strong interest in assuring that the Fund is well managed. While GE does not sponsor the Fund, the Fund is being established to offer an additional investing opportunity which is open solely to certain GE employees, former employees, and their immediate relatives. GE and its subsidiaries may also invest in the Fund. Thus, the success of the Fund has a strong bearing on employee morale and satisfactory employee relations, a matter, in which GE is vitally interested. It is also clear form the extensive experience and knowledge of the persons who have been selected to act as Trustees of the Fund that the addition of outside persons as trustees is not necessary in order to bring the Fund the needed skills for its operation. Also, the fund has estimated that the addition of two disinterested trustees would add approximately $25,000 of annual operating expenses. For these reasons, the Fund requests exemption from section 10(a) of the 1940 Act.

7. The Trustees have retained the right to terminate the Fund. In the case of such termination, the Unitholders will receive the net asset value of the Units held by them. Since all participants in the Fund will be aware of this right of termination prior to purchasing Fund Units, an exemption is requested from section 13(a)(4) of the 1940 Act to the extent required to permit the Fund to be terminated without a vote of the Unitholders.

8. Exemption is requested from that portion of section 15(a) which would require that the contract between the Fund and GEI be approved by persons holding a majority of the outstanding Fund Units. Since all of the Trustees are interested persons of GEI, exemption is also requested from the requirements of section 15(c) which provide for approval by a majority of disinterested trustees of any renewal of an investment advisory contract. The investment advisory services to be furnished to the Fund will be furnished at cost. Thus, it is highly unlikely that such a contract could be placed with any entity other than one, such as GEI, which is uniquely related to the needs and welfare of the participants in the Fund. Furthermore, were the Fund required to make solicitation of its Unitholders for this purpose or add disinterested trustees so as to meet the renewal approval requirements, a substantial increased cost burden would be placed on the Fund. Moreover, GE's interest in the success of the Fund is so fundmaental that any risk of the retention of unsatisfactory investment advisers would seem remote.

9. Exemption is requested from section 16(a) because the Fund does not plan to have the Trustees elected by the Unitholders. This is consistent with the Fund's approach to minimizing costs and the burden to the Fund participants.

10. Exemption from section 30(d) is requested to the extent that reports to Unitholders more than once a year would be required. The Fund proposes to make an annual report under section 30(d). In addition, the Fund will also file with the Commission other required reports and will furnish the Commission with any other reports and communications transmitted to Unitholders. It is believed that the foregoing reports should adequately serve the interest both of the Commission and of the investors, and that the requirement of additional reports to Unitholders would not be justified in light of the time and expense which the preparation of such reports would require.

11. Exemption from section 32(a) is being requested since the Fund does not plan to have Unitholders ratify the selection of auditors. A nationally recognized accounting firm has been selected by the Trustees and, it is contemplated that only firms of a similar caliber will be selected in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-23885 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-16044; 811-3001]**

## MSG Investment Co.; Application for Deregistration

October 9, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 ("the 1940 Act").

*Applicant:* MSG Investment Company ("Applicant").

*Relevant 1940 Act Sections:* Deregistration under section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

*Filing Date:* The application on Form N-8F was filed on January 27, 1987 and amended on May 11, and October 2, 1987.

*Hearing or Notification of Hearing.* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 3, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and

the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 5620 Ager Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Fran Pollack-Matz, (202) 272–3024 or Special Counsel Karen L. Skidmore, (202) 272–3023 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

**Applicant's Representations**

1. Applicant is organized as a District of Columbia corporation and is registered as a closed-end, diversified, management investment company under the 1940 Act.

2. On February 29, 1980, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N–8A. On June 30, 1980, Applicant filed a Registration Statement under the 1940 Act on Form N–2 which was declared effective on June 30, 1980.

3. In connection with its proposed dissolution, Applicant entered into an Agreement and Plan of Reorganization with Putnam Tax Exempt Income Fund and the Putnam Management Company, Inc. under which substantially all of the assets of Applicant were transferred to Putnam Tax Exempt Income Fund in exchange for shares of beneficial interest in Putnam Tax Exempt Income Fund. Such shares of beneficial interest were contemporaneously distributed to the shareholders of Applicant.

4. On October 24, 1986, the Board of Directors of Applicant approved the proposed Agreement and Plan of Reorganization and a Proxy and Proxy Statement by which such Plan would be submitted to Applicant's shareholders for their approval. The Board of Directors also approved the liquidation and dissolution of Applicant after the sale of substantially all of the assets of Applicant to Putnam Tax Exempt Income Fund. On December 10, 1986, the stockholders of Applicant, at a special meeting, approved the sale of substantially all of the assets of Applicant to Putnam Tax Exempt Income Fund and the subsequent liquidation and dissolution of Applicant.

5. Assets retained by Applicant consisted solely of $55,000 in cash which was held by the investment adviser of Applicant in the general account of Applicant. All such cash was used to discharge the remaining liabilities of Applicant, and none was invested in securities.

6. At the time of filing of the application, Applicant had no shareholders or liabilities (but since that time Applicant's investment adviser has billed Applicant and Applicant has paid such adviser $9,000 for services), was not a party to any litigation or administrative proceedings, and was not presently engaged in, nor intended to engage in, any business activities other than those necessary for the winding-up of its affairs.

7. As of the date of Amendment No. 2, October 2, 1987, Applicant is current on all filings required to be made with the SEC under the 1940 Act, as amended.

8. Applicant filed an Intent to Dissolve with the District of Columbia as required by the laws of the District of Columbia on December 23, 1986. Applicant intends to file Articles of Dissolution shortly after the order requested herein becomes effective, as required by the laws of the District of Columbia, which will complete the process of its formal dissolution.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–23880 Filed 10–14–87; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Release No. IC–16043; 812–6677]**

## Prudential-Bache Financial Asset Funding Corp.; Application

October 8, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicant:* Prudential-Bache Financial Asset Funding Corp. (as depositor of P-B CMO Trust I-III and similar trusts that will issue Collateralized Mortgage Obligations) ("Trusts").

*Relevant 1940 Act Sections:* Order requested under section 6(c).

*Summary of Application:* Applicant seeks a conditional order of exemption from all provisions of the 1940 Act in connection with the issuance of collateralized mortgage obligations ("Bonds") by the Trusts and the sale by Applicant of beneficial ownership interests in such Trusts.

*Filing Date:* The application was filed on April 3, 1987, and amended on September 2, and September 21, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Prudential Plaza, Sixth Floor, Newark, NJ 07101.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney (202) 272–2190 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

**Applicant's Representations**

1. Applicant, a Delaware corporation, is a direct, wholly-owned, limited purpose subsidiary of Prudential Securities Group Inc. The common stock of the Applicant will not be sold or otherwise transferred to any entity other than The Prudential Insurance Company of America ("Prudential") or one of Prudential's director or indirect majority-owned subsidiaries. Further, no sale or other transfer of any assets of the Applicant will cause control (as defined in Rule 405 under the Securities Act of 1933 ("1933 Act")) of the Applicant to be maintained outside of Prudential or one of its direct or indirect majority-owned subsidiaries.

2. Applicant seeks relief in connection with the organization of Trusts to issue and sell one or more series ("Series") of Bonds and the sale of beneficial interests in such Trusts. Each Trust will be established under a separate trust agreement ("Trust Agreement") between

Applicant, acting as depositor, and a banking institution, which may include The Prudential Bank and Trust Company, a bank affiliated with the Applicant, that will act as owner trustee ("Owner Trusttee") pursuant to the Trust Agreement. Under the terms of each Trust Agreement, the Applicant will convey property to the related Trust in return for certificates or other instruments evidencing beneficial ownership of such Trust ("Trust Certificates"). Each Trust will issue one or more Series of Bonds pursuant to the terms of an indenture ("Indenture") between the Trust and an independent trustee ("Bond Trustee"), as supplemented by one of more supplemental indentures.

3. The Mortgage Certificates collateralizing the Bonds will consist of: (1) "Fully-modified pass-through" mortgage-backed certificates and stripped mortgage-backed securities guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) Mortgage Participation Certificates and stripped mortgage-backed securities issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), (3) Guaranteed Mortgage Pass-Through Certificates and stripped mortgage-backed securities issued by the Federal National Mortgage Association ("FNMA Certificates") and (4) "Stripped Mortgage-Backed Securities" issued by trusts [1] established by the Applicant.

4. The Mortgage Certificates securing each Series of Bonds will be owned either: (i) By the Trust issuing such Bonds or (ii) by limited purpose financing entities affiliated with homebuilders, thrifts, commercial banks, mortgage bankers and other entities engaged in mortgage finance and pledged to secure such Series of Bonds pursuant to funding agreements ("Funding Agreements"). Each Series of Bonds may also be secured by a collection account, debt service funds, reserve fund and certain types of eligible investments specified in the Indenture for such Series (any or all of the foregoing together with Mortgage Certificates and Funding Agreements, "Bond Collateral"). The Bond Collateral will not secure any other Series of Bonds or any other obligations of the Trust.

5. Each Series of Bonds to be issued may contain one or more classes of variable or floating interest rate Bonds which will have a fixed maximum rate of interest ("interest rate cap") that will be payable on the Bonds (or the minimum rate of interest, in the case of an inverse-floating rate Bond). Each Series of Bonds will be sold pursuant to a prospectus, offering circular or private placement memorandum in public offerings or private placements through one or more investment banking firms, including Prudential-Bache Securities Inc., an affiliate of the Applicant. Indentures for public offerings will be qualified under the provisions of the Trust Indenture Act of 1939, as amended.

6. The Mortgage Certificates securing each Series of Bonds, together with cash available to be withdrawn from any debt service funds, reserve funds, or other funds, will have scheduled cash flow sufficient, when taken together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds, to make timely payments of principal of and interest on the Bonds in accordance with their terms. The outstanding collateral value of the Mortgage Certificates securing a Series will be at least equal to the unpaid principal balance of such Series on the issue date.

7. The interests of the holders of the Bonds ("Bondholders") will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the owners of the beneficial interests in the Trusts ("Owners") for several reasons: (a) The Mortgage Certificates, as well as the mortgage certificates underlying any Funding Agreement and Applicant's Stripped Mortgage-Backed Securities, which initially will be deposited into each Trust and will be pledged to secure the Bonds issued by such Trust, will not be speculative in nature because they will consist solely of GNMA Certificates, FNMA Certificates or FHLMC Certificates, and are guaranteed as to timely payment of interest and timely or ultimate payment of principal by the respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the relevant Indenture subjects the Bond Collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such Bond Collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders.[2] Applicant further submits that, for the reasons described fully in the application, the interests of the Owners will not be adversely affected by Applicant's affiliation with the proposed Owner Trustee.[2]

8. Except to the extent permitted by the limited right to substitute Mortgage Certificates, it will not be possible for the Owners to alter the initial Mortgage Certificates relating to a Series. Although it is possible that substitute Mortgage Certificates may have a different payment experience than the replaced Mortgage Certificates, the interests of the Bondholders will not be impaired because: (a) Such prepayment experience of Mortgage Certificates will be determined by market conditions beyond the control of the Owners, which market conditions are likely to affect all Mortgage Certificates with similar payment terms and cash flows in

[1] Stripped Mortgage-Backed Securities issued by trusts established by the Applicant will be similar to stripped mortgage-backed securities issued by FHLMC and FNMA in that they are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions and/or interest distributions on the underlying pool of assets, and the fractional interests of each class are not identical but in the aggregate represent 100% of the principal and interest distributions on the particular pool. Such trusts cannot issue Bonds and are not the subject of this application. In addition, each series of Applicant's Stripped Mortgage-Backed Securities: (a) Will be rated in one of the two highest rating categories by at least one nationally recognized statistical rating agency, (b) will represent an underlying pool of assets consisting entirely of "fully-modified, pass-through" mortgage-backed certificates fully guaranteed by GNMA, Mortgage Participation Certificates issued by FHLMC or Guaranteed Mortgage Pass-Through Certificates issued by FNMA (none of the pool assets will constitute stripped mortgage-backed securities) and (c) will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934 ("1934 Act"). Use of Applicant's Stripped Mortgage-Backed Securities as collateral for Bonds will not reduce the security afforded to Bondholders (as defined herein) nor expose them to a level of risk significantly different from that present in a Series of Bonds directly secured by FNMA Certificates, GNMA Certificates or FHLMC Certificates in which the Applicant's Stripped Mortgage-Backed Securities represent an interest. With respect to a Series of Bonds secured by Mortgage Certificates which are stripped mortgage-backed securities issued by FHLMC, FNMA or a trust established by the Applicant, the Applicant anticipates that less than all of the classes constituting each series of such Mortgage Certificates will secure such Series of Bonds.

[2] Each Indenture will further specifically provide that no amounts may be released from the lien of such Indenture to be remitted to the issuing Trust (and any Owner of Trust Certificates thereof) until: (i) The Bond Trustee has made the required payment of principal and interest on the Boards, (ii) the Bond Trustee has received all fees owed to it, (iii) the firm of independent accountants has received all fees owned to it for services rendered under such Indenture, and (iv) to the extent required by such Indenture, deposits have been made to certain reserve funds. Once amounts have been released from the lien of the Indenture, the Trust Agreement for each Trust will provide that the Owner Trustee will have a lien superior to that of the Owners to the remaining cash flow.

a similar fashion; (b) the interests of the Owners will not be different from those of the Bondholders with respect to such prepayment experience, since both the Owners and the Bondholders will have purchased their respective interests based on the same assumption of prepayment experience of the related Mortgage Certificates; and (c) to the extent that Owners may substitute Mortgage Certificates which may have a different prepayment experience than the original Mortgage Certificates, this situation is no different for the Bondholders than the situation in traditional collateralized mortgage obligation structures.

9. Without the consent of each Bondholder to be affected, neither the Trust, the Applicant, the Owner Trustee, the Owners nor the Bond Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount of, or the rate of interest on, any fixed rate Bonds or alter the method of determining the interest on any variable rate Bonds (3) change the priority of repayment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture. The sale of Trust Certificates will not alter the payment of cash flow to Bondholders, nor affect the amounts required to be deposited in the collection account or any reserve funds.

**Applicant's Legal Conclusions**

The requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because: (a) The Applicant and the Trusts are not the type of entities, and their activities are not the type of activities, intended to be regulated by the 1940 Act; (b) the Applicant and the Trusts may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Bondholders will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Bond Trustee representing their interests under the Indenture; (d) the Applicant's activities are intended to serve a recognized and critical public need in facilitating available funds for residential mortgages; and (e) the disclosures to Owners of a Trust and the limitation of the Owners of each Trust to no more than 100 institutional or accredited investors familiar with mortgage-related investments provide safeguards adequate to assure that such potential Owners do not require the protection of the 1940 Act.

**Conditions to Order**

Applicant agrees that the requested order may be expressly conditioned upon the following:

*A. Conditions Relating to the Bond Collateral*

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration either pursuant to Section 4(2) of the 1933 Act or because such Series of Bonds is offered and sold outside the United States to non-U.S. persons in reliance upon an opinion of U.S. counsel that registration is not required. No single offering of Bonds sold both within and outside the United States would be made without registration of all such Bonds under the 1933 Act, without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to U.S. investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) fo the 1943 Act. In addition, the Mortgage Certificates underlying the Bonds, and any Funding Agreements securing the Bonds, will be limited to GNMA Certificates, FNMA Certificates, FHLMC Certificates or Stripped Mortgage-Backed Securities as described herein.

(3) If new Mortgage Certificates are substituted, the substitute Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in Conditions A (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged to the Bond Trustee as a security for a Series of Bonds. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates. New Funding Agreements may be substituted for the initial Funding Agreements only if the substitution of the Mortgage Certificates securing such Funding Agreements would be permitted under this condition.

(4) All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds (collectively, the "Bond Collateral") will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. The custodian or Bond Trustee may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of the Applicant, any Trust or the Owner Trustee. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with any of the Trusts or the Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1940 Act.

(6) So long as applicable law requires, no less often than annually, an independent public accountant will audit the books and records of each Trust. In addition, as long as any Bonds are outstanding, such accountant will report at least annually on whether the anticipated payments of principal of and interest on the Bond Collateral of each Series of Bonds issued by such Trust continue to be adequate to pay the principal of and interest on the Bonds in accordance with their terms. Upon completion, copies of the accountant's report(s) will be provided to the Bond Trustee.

*B. Conditions Relating to Variable-Rate Bonds*

(1) Each class of variable rate Bonds will have set maximum interest rates (interest rate caps) which may vary from period to period as specified in the related prospectus.

(2) The Bond Collateral pledged to secure the Bonds will be sufficient to provide for the full and timely payment of the Bonds then outstanding, assuming the maximum applicable interest rates for each specified period on variable rate Bonds.[3] Specifically, reduction of

[3] In the case of a Series of Bonds that contains a class or classes of variable rate Bonds, a number of mechanisms exist to ensure that this representation

Continued

interest payments due on a Series of Bonds that contains a class or classes of variable rate Bonds will not result in the release of any of the Bond Collateral (except as aforesaid) from the lien of the Indenture prior to the payment in full of the Bonds.

*C. Conditions Relating to the Sale of Trust Certificates*

(1) Trust Certificates in each Trust will be sold only after all Series of Bonds to be issued by such Trust have been issued or concurrently with the fianl issuance of all Bonds to be issued by such Trust.

(2) The Owners of the Trust Certificates will agree to be bond by the terms of the applicable Trust Agreement.

(3) Trust Certificates will be offered and sold only to (a) Eligible Institutions as defined herein, or (b) certain non-institutinal "accredited investors" as defined in Rule 501(a) of the 1933 Act who will each purchase at least $200,000 of such Trust Certificates and have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Eligible Institutions will have such knowledge and experience in financial and business matters as to be capable of evaluating risks and volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interest in mortgage-related securities, such as those represented by the Trust Certificates. Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Trust Certificates and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, will be abe to understand the volatility of interest rate flunctuations as they affect the value of mortgage-related securities and residual interests therein. Eligible Institutions include mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutions that customarily engage in the purchase of mortgages and other types of mortgage collateral.

(4) Each sale of Trust Certificates will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the 1933 Act.

(5) Initially, the Applicant intends to sell the Trust Certificates of each Trust to no more than 25 investors. In no event will Applicant sell to more than 100 investors, of which no more than 15 will be noninstitutional accredited investors. The Trust Agreement relating to each Trust will prohibit the transfer of any Trust Certificate of such Trust if there would be more than 100 beneficial owners of such Trust Certificates at any time.

(6) Each purchaser of a Trust Certificate will represent that it is purchasing the Trust Certificate for investment purposes only and that it will hold such Trust Certificate in its own name and not as nominee for undisclosed investors.

(7) No owner of a Trust Certificate will be affiliated with the Bond Trustee; no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in the Trust will be affiliated with either the custodian of the Bond Collateral or the ageny rating the Bonds; and the Owner Trustee will not purchase any Trust Certificate, but will function as a legal stakeholder for the assets of the Trust.

*D. Condition Relating to REMICs*

The election by a Trust to be treated as a REMIC will have no effect on the level of the expenes that will be incurred by such Trust. Any Trust that elects to be treated as a REMIC will provide for the timely payment of all anticipated fees and expenses to be incurred in connection with the administration of the Trustee in a manner satisfactory to the agency or agencies that initially rate the Bonds. Either the Owners of the Trust Certificates of any such Trust will be personally liable pursuant to the Trust Agreement for such fees and expenses, or payment of such fees and expenses will be provided for any one or more of the methods set forth in the application.

*E. Special Conditions*

1. Applicant undertakes to secure from each Trust its consent to comply with all of the applicable representations and conditions set forth above and more specifically described in the application.

2. Applicant undertakes to obtain from Prudential its consent to the representation that the common stock of the Applicant will not be sold or transferred to any entity other than Prudential or one of its direct or indirect majority-owned subsidiaries.

For the SEC, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-23884 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

will be valid notwithstanding subsequent potential increases in the interest rate applicable to the variable rate Bonds. Procedures that have been identified to date for achieving this result include the use of: (i) Interest rate caps for the Variable Rate Bonds; (ii) "inverse" Variable Rate Bonds (which pay a lower rate of interest as the rate increases on corresponding "normal" Variable Rate Bonds); (iii) variable rate collateral to secure the Bonds; and (iv) interest rate swap agreements (under which a Trust would make periodic payments to the counterparty at a fixed rate of interest based on a stated principal amount, such as the principal amount of Bonds in the variable rate class, in exchange for receiving corresponding periodic payments from the counterparty at a variable rate of interest based on the same principal amount). It is expected that other mechanisms may be identified in the future. Applicant will give the SEC notice by letter of any such additional mechanisms before they are utilized in order to give the SEC an opportunity to raise any questions as to the appropriateness of their use. In addition, sufficient mechanisms will be placed to ensure the payment of principal of and interest on Variable Rate Bonds secured by stripped mortgage-backed securities issued or guaranteed by GMA, FNMA, FHLMC or trusts established by the Applicant. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

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[Rel. No. IC-16040; 811-3765]

## Cardinal Tax-Exempt Bond Trust, Selective Trusts Program, First Series (and Subsequent Series); Application

October 7, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregulation under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Cardinal Tax-Exempt Bond Trust, Selective Trusts Program, First Series (and subsequent series) ("Applicant").

*Relevant 1940 Act Section:* Section 8(f) and Rule 8f-1 thereunder.

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an invesment company.

*Filing Date:* The application on Form N-8F was filed on June 30, 1987, and an amendment thereto on October 7, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either

personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 155 East Broad Street, Columbus, Ohio 43215.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Heaney, Financial Analyst (202) 272–2847 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application on Form N–8F is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

*Applicant's Representations:* 1. On June 16, 1983, Applicant filed a registration statement on Form N–8B–2, thereby registering under the 1940 Act as a unit investment trust. On June 16, 1983, Applicant filed Form S–6 to register under the Securities Act of 1933, and such registration statement was subsequently withdrawn on April 4, 1984. Applicant never made a public offering of its securities and is not a party to any litigation or administrative proceeding. Applicant does not have any assets or liabilities. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–23818 Filed 10–14–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 35–24471]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act"); National Fuel Gas Supply Corp., et al.

October 8, 1987.

Notice is hereby given that following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application and/or declaration(s) should submit their views in writing by November 2, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the adresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall idenfity specifically the issues of 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 the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**National Fuel Gas Supply Corporation, et al. (70–6991)**

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and it subsidiaries, National Fuel Gas Supply Corporation ("Supply"), Seneca Resources Corporation ("Seneca"), and Empire Exploration, Inc. ("Empire"), all located at 10 Lafeyette Square, Buffalo, New York 14203, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(f), and 13 of the Act and Rules 45, 86, 87, 90, and 91 thereunder.

By authority granted in three prior orders in this matter, the National system undertook a series of intra-system property transfers, including the granting or retention of incidental property rights relating to mineral, coal, timber, and gas storage interests, and rights-of-way. All such conveyances were part of National's overall functional reorganization plan (HCAR Nos. 23465, 23585 and 23856, November 1, 1984, January 30, 1985 and October 4, 1985, respectively).

Supply and Seneca now proposes to modify the reorganization plan, prior to September 30, 1989, by effecting certain property transfers, which will result in the consolidation of the National system's Appalachian coal, mineral and timber resources, and unused storage rights in Seneca, and the National system's transmission rights in Supply. Supply proposes to transfer to Seneca certain land containing coal, mineral, timber and/or gas storage rights in properties located primarily in New York and Pennsylvania, and certain separate coal, mineral, timber and/gas storage rights, some of which were reserved or retained by Supply in connection with transferring oil and gas rights or interests to Empire. Supply will retain rights respecting existing and future pipelines relative to those properties. These properties will not exceed approximately 150,000 acres in the aggregate. Seneca proposes to convey to Supply rights for existing and future pipelines on land it owns. All transfers will be made at net book value, as of the previous September 30, unless no book value has been recorded. In those instances, the conveyances will be made for nominal consideration.

**Monongehela Power Company, et al. (70–7300)**

Monongehela Power Company ("Monongehela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac") Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, wholly owned electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b), and 7 of the Act and Rule 50 thereunder.

A notice was issued on September 24, 1987 (HCAR No. 24464) concerning a proposal to extend through December 31, 1988 the period during which Monongehela and West Penn may issue and sell up to $75 million and $35 million, respectively, of first mortgage bonds remaining to be sold, as previously authorized by order of the Commission dated June 12, 1987 (HCAR No. 24410). This supplemental notice adds Potomac's proposal to issue and sell, for refunding purposes, up to $70 million of first mortgage bonds remaining to be sold, as previously authorized, through December 31, 1988.

**N.W. Electric Power Cooperative, Inc. (70–7445)**

N.W. Electric Power Cooperative, Inc. ("Cooperative"), West Grand Avenue, P.O. Box 312, Cameron, Missouri 64429, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, a Missouri corporation incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit, rural electric distribution cooperative. Its operations are confined to 28 counties in northwest Missouri and two

counties in southwest Iowa. It is a generation-and-transmission-type cooperative financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 72, GENTRY. It sells electric energy at wholesale to its eight member/owner rural electric distribution cooperatives. Cooperative nominates two representatives to sit on Cooperative's bond board of directors. Cooperative elects the persons who serve on the board of directors of Service. It is stated the election of directors and the management of the affairs of Cooperative are effectively audited and regulated by REA.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Johathan G. Katz,**

*Secretary.*

[FR Doc. 87-23883 Filed 10-14-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Order Adjusting International Cargo Rate Flexibility Level

Policy statements PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The SFRL for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 87-4-2, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting October 1, 1987, we have projected nonfuel costs based on the year ended June 30, 1987, data and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 87-10-18 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982, level:

| | |
|---|---|
| Atlantic | 1.1190 |
| Western Hemiphere | .9279 |
| Pacific | 1.2674 |

**FOR FURTHER INFORMATION CONTACT:** Julien Schrenk, (202) 366-2441.

By the Department of Transportation:

Dated: October 9, 1987.

**Philip W. Haseltine,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 87-23876 Filed 10-14-87; 8:45 am]

BILLING CODE 4910-62-M

## Federal Highway Administration

**[Georgia Project EDS-460(1)]**

### Environmental Impact Statement; Newton, Rockdale, Walton and Gwinnett Counties, GA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Newton, Rockdale, Walton and Gwinnett Counties, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Thomas D. Myers, District Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Road, NW., Atlanta, Geogia 30367, telephone (404) 347-4751, or Peter Malphurs, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Georgia Department of Transportation (GDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new location, four-lane divided highway from Interstate 20 in Newton County to I-85 in Gwinnett County. The project length is approximately 31 miles. The proposed work is necessary to accommodate existing and future traffic demand resulting from the continued growth in the Metropolitan Atlanta area. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; and (3) constructing a four-lane, limited access highway on new location.

Letters describing the proposed action and soliciting comment will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A public information meeting has been held for the proposed action and a public hearing is planned for early in 1988. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time. To ensure that the full range of issues related to this proposed project are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action on the EIS should be directed to the FHWA at the address provided above.

(The Catalog of Federal Domestic Asssitance Program Number is 20.205, *Highway Research, Planning and Construction.* Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: October 1, 1987.

**Thomas D. Myers,**

*District Engineer, Federal Highway Administration, Atlanta, GA.*

[FR Doc. 87-23826 Filed 10-14-87; 8:45 am]

BILLING CODE 4910-22-M

## Federal Railroad Administration

**[FRA Waiver Petition Docket Number RSOR-87-1]**

### Petition for Relief From Requirements of Blue Signal Protection of Workmen; Union Pacific Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that Union Pacific Railroad Company (UP) has petitioned the Federal Railroad Administration (FRA), for permanent relief from the requirements of 49 CFR 218.25. This section establishes minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment, on main tracks, whose activities require them to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from such protection except when assigned to work on rolling equipment that is not part of the train or yard movement they have been called to operate.

The UP requests a waiver of the requirement for blue signal protection at the rear end of trains being serviced at the Rawlins, Wyoming, fueling facility on main tracks 1 and 2 and both passing tracks between control points 680 and 685, milepost 680 to milepost 685. Train movements over these main and passing tracks are governed by a Centralized Traffic Control signal system which provides automatic signal protection for the rear of the trains by displaying a "stop" aspect in the block behind the train that is stopped. The UP asserts that this alternative protection does not

compromise safety and requests this waiver in order to avoid significant train delays.

Interested person are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the appropriate Docket Number (Docket Number RSOR–87–1) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before November 30, 1987, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on October 5, 1987.

**J.W. Walsh,**

*Associate Administrator for Safety.*

[FR Doc. 87–23877 Filed 10–14–87; 8:45 am]

BILLING CODE 4910–06–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 199
Thursday, October 15, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**"FEDERAL REGISTER" NO.:** 87–22147.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, October 1, 1987, 10:00 a.m.

**CHANGE IN MEETING:** The open meeting scheduled for this date was cancelled.

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**"FEDERAL REGISTER" NO.:** 87–22801.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, October 8, 1987, 10:00 a.m.

**THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:**

Public Records and the Freedom of Information Act Regulations—Approval of Final Version of Regulations.

* * * * *

**DATE AND TIME:** Tuesday, October 20, 1987, 10:00 a.m.

**PLACE:** 999 E Street NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, section 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**DATE AND TIME:** Thursday, October 22, 1987, 10:00 a.m.

**PLACE:** 999 E Street NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987–26—Kirk B. Cunningham on behalf of Principal Mutual Life Insurance Company.
Routine Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 87–23996 Filed 10–13–87; 2:59 pm]

BILLING CODE 6715–01–M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, October 19, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: October 9, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87–23892 Filed 10–9–87; 4:13 am]

BILLING CODE 6210–01–M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Thursday, October 8, 1987 at 10:30 a.m., or following completion of the Generalized System of Preferences Hearing, whichever occurs later.

**PLACE:** Room 117, 701 E Street NW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Continuation of FY 89 Budget Discussion

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523–0161.

**Kenneth R. Mason,**

*Secretary.*

October 6, 1987.

[FR Doc. 87–23903 Filed 10–09–87; 5:05 pm]

BILLING CODE 7020–02–M

**INTERNATIONAL TRADE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 52 FR 36667—dated September 30, 1987.

**PREVIOUS ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, October 14, 1987.

Addition of agenda item for the meeting:

7. FY 89 Budget

In conformity with 19 CFR 201.37(b), Commissioners Liebeler, Brunsdale, Eckes, Lodwick, and Rohr determined that Commission business required the change in subject matters of the meeting on October 14, 1987 by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523–0161.

**Kenneth R. Mason,**

*Secretary.*

October 8, 1987.

[FR Doc. 87–23904 Filed 10–9–87; 5:05 pm]

BILLING CODE 7020–02–M

**MARINE MAMMAL COMMISSION**

**TIME AND DATE:** The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, December 10, 1987, from 8:30 a.m. to 10:00 a.m. Public sessions of the Commission and the Committee meetings will be held on Thursday, December 10, from 10:00 a.m. to 5:30 p.m., on Friday, December 11, from 9:00 a.m. to 5:30 p.m., and on Saturday, December 12, from 9:00 a.m. to 12:30 p.m.

**PLACE:** Hyatt Regency, 400 SE. Second Avenue, Miami, Florida 33131–2197, Telephone 305/358–1234.

**STATUS:** The executive session will be closed to the public. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

**MATTERS TO BE CONSIDERED:** The Commission and Committee will meet in public session to discuss a broad range of marine mammal issues. Major emphasis will be on the West Indian manatee. In addition, the Hawaiian monk seal, habitat protection, the die-off of bottlenose dolphins (*Tursiops truncatus*) along the Atlantic coast,

certain international activities affecting marine mammals, marine debris, permits, and re-authorization of the Marine Mammal Protection Act will be discussed.

**SUPPLEMENTARY INFORMATION:** This is a second notice of the Commission's December meeting and does not constitute any change in the scheduling, location, or agenda. The matters to be considered are those which were originally published in the August 19, 1987 (52 FR 31121) Notice.

**CONTACT PERSON FOR MORE INFORMATION:** John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006, 202/653–6237.

Date: October 8, 1987.

**John R. Twiss, Jr.,**

*Executive Director.*

[FR Doc. 87–23916 Filed 10–13–87; 9:43 am]

BILLING CODE 6820–31–M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [52 FR 37398 October 6, 1987].

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Tuesday, September 29, 1987.

**CHANGE IN THE MEETING:** Additional item.

The following additional item was considered at a closed meeting on Thursday, October 8, 1987, at 10:30 a.m.

Formal order of investigation.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272–2014.

**Shirley E. Hollis,**

*Assistant Secretary.*

October 9, 1987.

[FR Doc. 87–23934 Filed 10–13–87; 2:06 pm]

BILLING CODE 8010–01–M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 12, 1987:

A closed meeting will be held on Wednesday, October 14, 1987, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 14, 1987, at 2:30 p.m., will be:

Consideration of *amicus* participation.

Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

**Shirley E. Hollis,**

*Assistant Secretary.*

October 9, 1987.

[FR Doc. 87–23935 Filed 10–13–87; 2:06 pm]

BILLING CODE 8010–01–M

federal register

Thursday
October 15, 1987

Part II

# Environmental Protection Agency

40 CFR Part 350

Trade Secret Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 350**

**[FRL-3261-5]**

## Trade Secret Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule publishes the procedures for claims of trade secrecy for facilities reporting under sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III, and for EPA's handling of such claims, under the Superfund Amendments and Reauthorization Act of 1986, for submission and handling of petitions requesting disclosure of chemical identities claimed as trade secret, and for disclosure to health professionals of Title III information claimed as trade secret. The proposed rule published today will not become effective until promulgated in final form following opportunity for comment. Until then, the proposed rule may be used as guidance by affected parties.

**DATES:** Written comments on the proposed rule must be received on or before December 14, 1987. A series of public meetings will be scheduled about mid-November to receive comment. For further information contact the Chemical Emergency Preparedness Hotline at 1-800-535-0202 (in Washington, DC at (202) 479-2449) or look for notice in the **Federal Register** in mid-October.

**ADDRESS:** Written comments should be submitted in triplicate to Preparedness Staff, Superfund Docket Clerk, Attention: Docket Number 300 PQ-TS, Superfund Docket Room LG-100, U.S. Environmental Protection Agency, Mail Stop WH 548D, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this rulemaking are contained in the Superfund Docket located in Room LG-100, at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Beverly D. Horn, Attorney-Advisor, Office of General Counsel, Contracts and Information Law Branch, LE-132G, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5460, or the Chemical Emergency Preparedness Program Hotline at 1-800-535-0202 (in Washington, DC at (202) 479-2449).

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

I. Introduction
- A. Authority
- B. Background of this Rulemaking

II. Trade Secret Claim Procedure
- A. Definition of Trade Secret
- B. Methods of Claiming Trade Secrecy
- C. Claims Under Sections 303(d)(2) and 303(d)(3)
- D. Claims Under Section 311
- E. Claims under Section 312
- F. Claims Under Section 313
- G. Initial Substantiation
- H. Claims of Confidentiality in the Substantiation
- I. Submissions to State and Local Authorities

III. Petition Requesting Disclosure of Chemical Identity Claims as Trade Secret

IV. EPA Review of Trade Secrecy Claims
- A. Overview of the Process
- B. Determination of Sufficiency
- C. Determination of Insufficiency
- D. Determination of Trade Secrecy
- E. Enforcement

V. Relation of Section 322 to Other Statutes
- A. Relationship to State Confidentiality Statutes
- B. Overlap with Other EPA-Administered Statutes
- C. Relationship to Freedom of Information Act

VI. Release of Trade Secret Information
- A. Releases to States
- B. Releases to Authorized Representatives of EPA

VII. Disclosure to Health Professionals
- A. Non-emergency Diagnosis or Treatment
- B. Emergency Situations
- C. Preventive and Treatment Measures
- D. Statement of Need
- E. Confidentiality Agreement
- F. Related Issues

VIII. Summary of Supporting Analyses
- A. Regulatory Impact Analysis
- B. Regulatory Flexibility Analysis
- C. Paperwork Reduction Act

### I. Introduction

#### *A. Authority*

EPA is proposing this rule pursuant to sections 322 and 323 of Title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499. Title III is also cited as "The Emergency Planning and Community Right-To-Know Act of 1986." Section 322 of Title III provides the procedures for claiming trade secrecy for information submitted under sections 303 (d)(2) and (d)(3), 311, 312 and 313. It also provides a process whereby members of the public can file petitions requesting the disclosure of chemical identities claims as trade secret. Section 323 provides procedures for access to chemical identities, including those claimed as trade secret, by health professionals who need the information for diagnosis, treatment or research.

#### *B. Background of this Rulemaking*

The Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, signed into law on October 17, 1986, amends and reauthorizes portions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.* Title III of SARA is a free-standing statute known as "The Emergency Planning and Community Right-to-Know Act of 1986." It contains provisions requiring facilities to report to State and local authorities, and EPA, the presence, use and release of extremely hazardous substances (described in sections 302 and 304), and hazardous and toxic chemicals (described in sections 311, 312, and 313 respectively). For the reporting required in sections 303, 311, 312, and 313, a submitter may claim the chemical reported as trade secret.

1. *Section 303.* Section 303 involves the formulation of comprehensive emergency reponse plans for extremely hazardous substances. These are any of 406 substances on a list published by EPA under section 302. The regulations for sections 302, 303, and 304 were published on April 22, 1987, at 52 FR 13378.

Any facility where an extremely hazardous substance under section 302 is present in excess of the threshold quantity (as determined by EPA) must report to the State emergency response commission, established under section 301 of Title III. The local emergency planning committee, also established under section 301 of Title III, will contact any facility that has identified itself, in order to formulate a local emergency contingency plan. In this planning process, a facility is required to provide the local emergency planning committee with information the committee requests, except that the facility may withhold trade secret chemical identity from the committee. The facility must also inform the committee of any relevant changes which occur or are expected to occur which may affect the contingency plan. When informing the committee of these changes, the facility may also withhold trade secret chemical identity from the committee.

2. *Sections 311 and 312.* Section 311 requires the owner or operator of facilities subject to the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act (15 U.S.C. 651 *et seq.* as amended, 52 FR 31852 [August 24, 1987]) to submit material safety data sheet (MSDS), or a list of the chemicals for which the facility is required to have an MSDS, to the local emergency planning committees, State emergency response commissions, and local fire departments. The facilities are required to submit the MSDS or alternative list by October 17, 1987, or three months after the facility is required to prepare or have an MSDS for a hazardous chemical under OSHA regulations, whichever is later. Any trade secret chemical identity may be withheld from the MSDS or list of chemicals, provided the submitter follows the trade secret claims procedures under the section 322 regulation.

Under Section 312, owners and operators of facilities that must submit an MSDS under section 311 area also required to submit additional information on the hazardous chemicals present at the facility. Beginning March 1, 1988, and annually thereafter, the owner or operator of such a facility must submit an inventory form containing an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the location of these chemicals at the facility. Section 312(a) requires owners or operators of such facilities to submit the inventory form to the appropriate local emergency planning committee, State emergency response commission, and local fire department on or before March 1, 1988, (or March 1 of the first year after the facility first become subject to the OSHA MSDS requirements for a hazardous chemical) and annually thereafter on March 1.

Section 312 specifies that there be two reporting "tiers" containing information on hazardous chemicals at the facility in different levels of detail. "Tier I," containing general information on the amount and location of hazardous chemicals by category, is submitted annually. "Tier II," containing more detailed information on individual chemicals, is submitted upon request. There will be no trade secret claims for Tier I reporting since no specific chemical identity is given. However, submitters may withhold trade secret chemical identity from the Tier II form.

OSHA recently published a final rulemaking at 52 FR 31852, on August 24, 1987, expanding coverage of the facilities required to maintain MSDSs. The number of facilities thereby subject to reporting under sections 311 and 312 will have expended from 350,000 to over 4 million, starting in 1988.

The proposed regulation for sections 311 and 312 was published at 52 FR 2836 on January 27, 1987. The final regulation will be published in the near future.

3. *Section 313.* Section 313 is the last reporting requirement in Title III in which trade secret claims can be made. Under section 313, a toxic chemical release inventory form (published by EPA) must be filed with a designated State agency, and EPA. This form must be filed for any toxic chemical (on a list published by EPA) which is manufactured, processed or otherwise used in amounts exceeding the threshold quantity at a covered facility. The form also indicates the total annual releases of the chemical to the environment. A covered facility is any facility with 10 or more employees in SIC Codes 20–39. The list of toxic chemicals was published in the section 313 proposed rule on June 4, 1987 at 52 FR 21152. As with other sections of Title III, trade secret chemical identity may be withheld from the toxic chemical release inventory form.

4. *Section 322.* The section 322 regulations contain the procedures which a submitter must follow in order to file a trade secret claim. These claims are submitted to EPA only, by submitting an unsanitized version of the document containing the Title III information. This version will contain the chemical identity claimed as trade secret. The submitter must also submit a santitized version, which is identical to the unsanitized version in all respects except that the trade secret chemical identity is deleted, and instead a generic class or category is included. This is the version which is submitted to the State or local authorities, as appropriate.

Section 322(b) of Title III requires that a submitter file a substantiation of its trade secret claim with the filing containing the chemical identity claimed as trade secret. This up-front substantiation will consist of the answers to seven questions which are intended to elicit sufficient factual support to indicate whether the claim will meet the criteria set forth in the statute for a claim of trade secrecy.

That statute also allows submitters to claim as trade secret any trade secret or confidential business information which the submitter must include in the substantiation in order to fully answer the seven questions. This claim of trade secrecy is more expansive in scope than that allowed under the reporting requirements of Title III, because it it not limited solely to chemical identity, and includes any trade secret or confidential business information. A detailed explanation on how to make a trade secrecy claim is found under section II.G. below.

The regulation contains the procedures for filing petitions by the public to request disclosure of chemical identity claimed as trade secret. (The public petition process does not cover requests for public disclosure of information claimed as trade secret other than chemical identity. These requests for disclosure must be submitted under EPA's Freedom of Information Act regulations at 40 CFR Part 2.) The section 322 regulation also sets forth procedures the Agency must follow in making a determination as to whether any chemical identity claimed as trade secret is in fact a trade secret. These determinations will be made by the program designated to receive and handle trade secret claims for that particular reporting section in Title III. The Office of General Counsel will hear intra-agency appeals from the determinations of trade secrecy.

5. *Section 323.* The section 323 regulation contains provisions allowing health professionals to gain access to chemical identities, including those claimed as trade secret, in three different situations. The first situation is for non-emergency treatment and diagnosis of an exposed individual. Second, access is permited for emergency diagnosis and treatment. Finally, health professionals employed by the local government may receive access to a trade secret chemical identity to conduct preventive research studies and to render medical treatment. In all situations but the medical emergency, the health professionals must submit a written request and a statement of need, as well as a confidentiality agreement, to the facility holding the trade secret. The statement of need verifies that the health professional will be using the trade secret information only for the needs permitted in the statute, and the confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret.

## II. Trade Secret Claim Procedure

### *A. Definition of Trade Secret*

In accordance with section 322(c) of Title III, the definition of a trade secret in this regulation is equivalent to that in the Restatement of Torts, section 757,

and the regulation developd by the Occupational Safety and Health Administration to implement its Hazard Communication Standard. The OSHA Hazard Communication Standard requires disclosures of the specific chemical identity of chemicals to which employees are exposed in the workplace, except in those cases in which the identity of the chemical in question is determined to be a bona fide trade secret. The U.S. Court of Appeals ruling in *United Steelworkers of America* v. *Auchter*, 763 F.2d 728 (3d Cir. 1985), required that OSHA amend its Hazard Communication Standard to adopt a definition from common law, the Restatement of Torts, section 757, Comment b. (1939), which reads: " 'trade secret' may consist of any formula, pattern, device, or compilation of information which is used in one's business, and which gives [the employer] an opportunity to obtain an advantage over competitors who do not know or use it." The court concluded in the *Auchter* case that the term "trade secret" is not intended to provide protection for chemical identities which are readily determinable by reverse engineering.

Title III, however, only allows trade secrecy claims for a subset of the material which is traditionally covered under trade secrecy law. Section 322(a) specifically states that submitters under Title III may withhold only the "specific chemical identity (including the chemical name and other specific identification)" as a trade secret. The "specific chemical identity" means either the chemical name or other specific identification such as the Chemical Abstract Services Registry Number (CASRN).

The statute is unclear as to the permissible scope for claims of trade secrecy for chemical identity. The most narrow interpretation would be to limit a claim of trade secrecy solely to the mere presence of the particular chemical at the facility, or the chemical composition of the chemical itself. Congress stated in the Conference Report that, "the knowledge of [the] presence [of a specific chemical] at the purchasing facility could effectively define for its competitors the process and/or products being made there." H.R. CONF. REP. NO. 99–962, 99th Cong., 2d Sess. 304 (1986).

Throughout the Conference Report, however, Congress also displayed general concern for the protection of all legitimate trade secrets. For instance, in discussing the reporting requirements under section 313, it was noted, "[t]he conference substitute provides for reporting categories of use and ranges of chemical present because the exact [identity] of identified chemical[s] at a facility or the exact amount present may disclose secret processes." *Id.* at 298. Similarily, in discussing the reporting requirements under section 312, Congress stated, "[i]n order to protect chemical process trade secret information, reporting ranges may need to be broad." *Id.* at 290. Congress likely anticipated that it would be possible for the required reporting on the forms under Title III to be structured broadly enough to avoid compromising legitimate trade secrets. EPA has made every effort to do this. EPA believes that even with the use of broad ranges and reporting categories, however, the amount of detail requested under Title III may in some cases still allow cross-referencing of information which could reveal valuable trade secret information.

For these reasons, EPA believes that the statute allows trade secrecy claims for chemical identity to be made for the linkage between chemical identity and other information reported on Title III submissions (e.g., specific process information and special handling procedures), in addition to claims relating to the presence of a chemical at a facility or the chemical composition of the chemical, through claiming chemical identity to be a trade secret. Submitters will be required to meet the four criteria for supporting a claim of trade secrecy set forth in section 322(b) of the statute, and discussed in greater detail in section II.G. below, for all such claims.

As a practical matter, EPA believes that this interpretation of the scope of trade secrecy will not involve great numbers of additional claims, because EPA expects that submitters will be unable to meet the four statutory criteria for trade secret linkages other than the presence of the chemical, or its chemical composition. As an example, EPA does not expect linkages between the chemical identity and the amount on site to meet all the section 322(b) requirements. Where the identity of a chemical that a company uses in a particular product is publicly known but the amount on site is not known, the Agency considers it unlikely that a submitter will be able to show that the chemical identity is not readily discoverable through reverse engineering (section 322(b)(4)), since the chemical identity is already a matter of public knowledge.

EPA also believes that this interpretation does not run counter to the other major public policy thrust in Title III—that of public disclosure—because the requirement of an up-front substantiation, which will cause submitters to justify their claims, will limit spurious claims. Further, EPA's intention is to randomly evaluate trade secret claims and to prosecute vigorously those submitting frivolous claims. The $25,000 fine per frivolous claim under such circumstances is evidence of Congress's intent to deter such claims. All submitters should be aware that supplemental information submitted to EPA after the initial substantiation should clearly confirm the validity of their claim as set out in the initial substantiation, or they may be subject to the penalty for frivolous claims. EPA requests public comment on the scope of the trade secrecy claim.

The question has been raised as to whether information which may qualify as emissions or effluent data, respectively, under section 114(c) of the Clean Air Act and section 308(b) of the Clean Water Act, may be claimed as trade secret under section 322. The second criterion of the four which a trade secret claimant must meet, under section 322(b), requires that information claimed as trade secret "is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law." EPA's position is that this language in section 322(b) refers to specific information previously submitted to a Federal or State authority and determined to be publicly disclosable, or information previously submitted to a Federal or State authority under a law or regulation which does not allow a claim of confidentiality.

Information which has been determined administratively or judicially to constitute emissions or effluent data within the meaning of section 114(c) of the Clean Air Act, or section 308(b) of the Clean Water Act is required to be disclosed to the public and could not be withheld from disclosure under section 322. A company could not claim as trade secret information as to which a trade secrecy claim has been categorically disallowed, such as information required in NPDES permit applications (40 CFR 122.7(c)). Also, a company could not claim as trade secret data already collected by EPA where the Agency has decided that the data presented no valid claim of trade secrecy, either because it was emissions or effluent data or for other reasons.

A further question has been raised concerning the status of information which EPA could obtain, but has not requested, under the Clean Air Act or Clean Water Act and of information in EPA's possession which could constitute emissions or effluent data, but as to which no determination has been made

whether it is trade secret, or, if it is, whether it is emissions or effluent data. There is no discussion of this issue in the Conference Report or elsewhere. Congress likely intended to leave undisturbed the status of information as to which no claim of confidentiality was permitted under State or Federal law, or as to which a decision had been made that no valid claim was presented. However, a trade secret claimant should not be required to show that the chemical identity submitted to the Agency and claimed confidential would not constitute emissions or effluent data required to be made public by EPA if it had been submitted under section 114(c) of the Clean Air Act or section 308(b) of the Clean Water Act. On the other hand, a successful claim that information is trade secret under Title III would not be determinative of the status of the information under the Clean Water Act of Clean Air Act, where no determination had been made whether it constituted emissions or effluent data. EPA requests comment on this issue.

*B. Methods of Claiming Trade Secrecy*

There are five separate submissions that can be made under Title III which may include a claim of trade secrecy. These are: (1) The notification of any changes at the facility which would affect emergency plans, under section 303(d)(2); (2) answers to questions posed by local emergency planning committees under section 303(d)(3); (3) material safety data sheets or chemical lists submitted under section 311; (4) Tier Two emergency and hazardous chemical inventory forms submitted under section 312; and (5) the toxic release inventory form submitted under section 313.

The basic requirements for making a claim are similar, although there are some differences among the different sections. These differences will not affect the validity of a submitter's claim, provided the submitter adheres to all of the requirements. The basic requirements are as follows. First, EPA must receive a copy of the document required to be submitted under sections 303(d)(2) and (d)(3), 311, 312, or 313, which includes the specific chemical identity claimed as trade secret. Second, EPA must receive a sanitized copy of this same document in which the chemical identity claimed as trade secret is deleted and in its place is included the generic class or category of the chemical claimed trade secret. This sanitized copy should be identical to the original in all respects except that it does not contain the chemical identity. Third, EPA must receive a substantiation for each chemical claimed as trade secret, as explained in Second II.G. below. Although these three items are the minimum required for a claim of trade secrecy under all sections, EPA suggests that submitters carefully review the requirements under each section before filing a trade secrecy claim.

In some cases, a facility may not know the identity of a chemical that it uses under a trade name or in a proprietary mixture, but might want to file a trade secret claim for the trade name or mixture. The user will be allowed to file for trade secrecy, using the trade name as chemical identity and filling out those parts of the Title III submittal sent to EPA that it can supply without knowing the specific chemical identity. The user would still be required to file a complete substantiation. However, some users making trade secret claims for trade name products or mixtures may feel that some portions of the substantiation questions do not apply to their trade secret claim. If so, the user must answer the question to the best of its ability by explaining why it believes the question to be inapplicable.

Users who do not wish to make a trade secret claim for the trade name or mixture, and have not been provided with the specific chemical identity in the trade name or mixture, are not considered to be withholding specific chemical identity for purposes of submitting trade secret claims and substantiations.

EPA considered imposing more extensive requirements on users. One approach would require the supplier to inform EPA of the chemical identity and complete the substantiation questions for the user. Another option considered was the "best efforts" approach proposed in the preamble to the section 313 rule, published on June 4, 1987 (52 FR 21151, 21155), which would require the user to make multiple attempts to obtain the chemical identity from the supplier, including offering to enter into a confidentiality agreement with the supplier.

The Agency decided in favor of the more pragmatic approach taken in this proposal. In general, the Agency is concerned with lessening the burden on users who wish to file for trade secret status, especially since suppliers are unlikely to divulge information to users under a wide variety of circumstances even if the users are repeatedly persistent. EPA requests comment on this issue.

As provided in the final 311 and 312 regulation with regard to reporting mixtures, owners or operators of facilities can make trade secret claims for mixtures on their sections 311 and 312 submittals by either claiming an element or compound in the mixture as trade secret or claiming the entire mixture as trade secret. If the mixture is reported as a whole, a substantiation should be provided for the entire mixture; if the individual elements are reported, then a substantiation should be submitted for each element.

All trade secret claims and petitions requesting disclosure of identities claimed as trade secret should be sent to the following address: U.S. Environmental Protection Agency, P.O. Box 70266, Washington, DC 20024–0266. The Agency will be examining claims processing issues and may need to establish an alternate address for section 313 claims in the future.

*C. Claims Under Sections 303(d)(2) and 303(d)(3)*

Section 303 concerns the formulation of contingency plans by local emergency planning committees. Section 303(d)(2) states that owners or operators of facilities must promptly inform committees of any relevant changes occurring at the facilities as the changes occur or are expected to occur. Section 303(d)(3) states that owners or operators of facilities must promptly provide information to committees when committees request information from facilities necessary for the development and implementation of emergency plans.

A trade secret claim under section 303(d)(2) must include a copy of the notification of changes in the facility. This notification may be in the form of a letter. The document must include the name and address of the submitter. Chemical identity claimed as trade secret must be clearly marked "CONFIDENTIAL" or "TRADE SECRET." A trade secret claim under section 303(d)(3) must include a copy of the information requested by the local emergency planning committee and the information provided by the facility in response to the request. A letter containing this information is sufficient. The document must include the name and address of the submitter. Chemical identity claimed as trade secret must be clearly marked "CONFIDENTIAL" or "TRADE SECRET."

In both of these submittals, the generic class or category of each chemical ("class" is synonymous with "category") claimed as trade secret should be indicated in parentheses directly after the claimed chemical identity. The generic class or category for chemicals subject to section 303 reporting is discussed below in this section.

EPA must also be provided with a sanitized copy of this document. The sanitized copy should be a duplicate of the original except that the submitter must delete any chemical identity claimed as trade secret, leaving in its place the generic class or category for each claimed chemical. This sanitized copy is the copy which is to be sent to the local emergency planning committee. Finally, for each chemical identity claimed as trade secret, a complete substantiation must be submitted. The substantiation will be discussed in greater detail in Section II.G. below.

*Generic Class or Category.* When a committee develops its contingency plan, identification of the specific chemicals that are present in its jurisdiction is vital to the negotiation of the plan and is the first issue to be resolved in the initial preparation of the plan. As stated above, if a facility does not wish to reveal the specific chemical identity to the committee in the context of section 303(d)(2) and (d)(3), the section 303 submittal must include in the place of chemical identity, the generic class or category of the chemical claimed as trade secret.

EPA is proposing three options regarding the choice of generic class or category for section 303(d)(2) and (d)(3) submittals. For purposes of reporting prior to promulgation of the final rule, the Agency suggests that submitters choose an appropriate generic class or category based upon any of the three alternatives presented. The purpose of using generic classes or categories when chemical identity is requested by the committee during the contingency planning process and is not disclosed by facilities is to aid the public by providing relevant information about the chemical as a substitute for knowledge which could be gained from the specific chemical identity. We invite comment from the public on each of the alternatives presented below in terms of which option does, in fact, best aid the public. All of the alternatives are based on the concept of an example list of generic classes or categories.

The purpose of a contingency plan is to provide effective, expedient emergency response to aid response workers and community residents in the event of a chemical release. In order to prepare an effective contingency plan, the hazards involved with the specific chemicals such as explosivity or flammability, adverse health effects associated with the release, and special safety equipment needed to contain the release must be known. Only by knowing this information, can proper equipment and procedures be used to contain the release. If chemical identity is claimed as trade secret by a facility, such information can still be obtained through the determination of a generic class or category that reflects the information, as well as by other questions posed to the facility by the local emergency planning committee.

EPA recognizes that each individual committee across the country will have its own unique safety needs to consider when developing its contingency plan. For example, a committee must take into account various factors relating to risk management and assessment such as distance of the affected community from the facility, type of land use near the facility, and level of sophistication of the first responder. These factors vary greatly from one committee to the next. Likewise, facilities across the country also differ widely in terms of potential hazards arising from releases, adverse health effects associated with the releases, and prevention techniques employed to guard against the hazards.

Because of this wide variation of factors for both committees and facilities, the Agency believes it inappropriate to designate specific generic classes or categories which must be used by each committee and facility in all cases where specific chemical identity is claimed as trade secret. To devise such a list, taking into account the variety of important safety factors described above, would be impossible. Instead, the Agency believes that committees and facilities should engage in discussion with each other in order to jointly arrive at generic classes or categories that accurately and suitably reflect the hazards of specific chemical releases, prevention techniques to guard against the releases, adverse health effects associated with the chemical releases and any other safety information, as described above, considered significant.

a. *Alternative A.* This alternative allows committees and facilities to arrive at their own choices of generic classes or categories with no example classes offered by the Agency. In suggesting this approach, however, EPA strongly encourages committees and facilities to arrive at classes or categories that incorporate the safety information discussed above. In this way, class or category determination can be a meaningful substitute for chemical identity and can serve as the vehicle in which important safety facts for contingency planning purposes can be shared and put to good use.

b. *Alternative B.* This alternative differs from Alternative A in that the hazard categories set forth in the final sections 311 and 312 regulation are provided as examples that can be chosen by committees and facilities in arriving at generic classes or categories after discussions. Under this option, either one of the five categories set forth below can be chosen to be the generic class or category, or another hazard-based class can be chosen.

The following is the example list of hazard-based classes or categories:

1. Acute (Immediate)
2. Chronic
3. Fire
4. Sudden Release of Pressure
5. Reactivity

Hazard categories are proposed in this option because, as noted above, contingency planning should have as its goal hazard identification, prevention techniques to guard against the hazards, adverse health effects associated with the releases, and any other safety information the committee and facility consider significant. A generic class or category based on these factors will in most cases be more beneficial for contingency planning purposes than a generic class or category based on chemical structure.

c. *Alternative C.* This alternative differs from the other two options in that the Agency suggests that the determination of class or category by committees and facilities generic be based on chemical structure. It will at times be appropriate for contingency planning purposes to have chemical structure be the basis of the class or category. The important consideration is that hazard identification, hazard prevention techniques, adverse health effects, and any other safety information the committee and facility consider significant be included in the determination of the class or category. These factors are essential to the formulation of an effective contingency plan.

### *D. Claims Under Section 311*

Section 311 concerns the provisions for submissions of material safety data sheets. A trade secret claim submitted under section 311 to EPA must include a copy of the MSDS or chemical list, whichever is submitted by the facility under this section. Chemical identities claimed as trade secret must be clearly marked as "CONFIDENTIAL" or "TRADE SECRET." The generic class or category (the word "class" is synonymous with "category") of the claimed chemical should be inserted directly below the chemical identity. The generic class or category for chemicals claimed as trade secret under sections 311 and 312 is explained below

in this section. This is the unsanitized version of the MSDS.

EPA must also receive a sanitized copy of the MSDS or chemical list, which should be a duplicate of the original in all respects except that the chemical identity claimed as trade secret is deleted and in its place is included the generic class or category of the chemical claimed as trade secret. This is the copy that should be sent to the State emergency response commission, the local emergency planning committee and the local fire department. When sending copies to EPA, the unsanitized copy should be stapled to the sanitized copy, the unsanitized copy on top. In addition, a substantiation for each trade secret chemical identity must be included. An explanation of a sustantiation is set forth in Section II.G. below.

*Generic Class or Category.* The chemicals covered by sections 311 and 312 are the same as those covered by the Occupational Safety and Health Act of 1970 and its regulations. It is not possible to write a finite list of generic classes or categories for sections 311 and 312 because there is no finite list of chemicals required to be reported under the sections. Therefore, the choice of generic class or category should follow the same process as proposed for section 303 submittals above.

*E. Claims Under Section 312*

Section 312 requires the submission of emergency and hazardous chemical inventory forms. Information filed on the Tier I emergency and hazardous chemical inventory form will not involve claims of trade secrecy since chemical identity is not requested on the form. Trade secrecy claims under section 312 involve only Tier II inventory forms.

On the Federal section 312 Tier II inventory form, a trade secret box appears to the right of the space for chemical identity. Instructions in the sections 311, 312 final rule, to be published in the near future, direct that if chemical identity is claimed as trade secret, the trade secret box should be checked. As with section 311, EPA must receive an unsanitized copy of the form, i.e., the copy just described with chemical identity included and the trade secret box checked. EPA must also receive a sanitized version of the form which must be a duplicate of the original except that the chemical identity will be deleted and in its place the generic class or category of that chemical will be inserted. The two copies should be stapled to each other, the unsanitized version on top and the sanitized version on the bottom. In order to ensure accurate determination of a trade secret claim, the order of chemical names found on the unsanitized version of the Tier II form (the top page) must match the order of generic classes or categories found on the sanitized version. This sanitized copy of the original form should be sent to the requesting State emergency response commission, local emergency planning committee, or fire department.

In addition, a substantiation must be included for each chemical claimed as trade secret. Explanation of the substantiation is found in Section II.G. below.

Claims of confidentiality regarding the location of chemicals in facilities are not covered by Title III trade secrecy protection. The confidential location information should not be sent to EPA, but only to the requesting entity. This information will be kept confidential by that entity under section 312(d)(2)(F) which refers to section 324. Section 324(a) states that upon request by a facility owner or operator subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee must withhold from disclosure the location of any specific chemical required by section 312(d)(2) to be contained in a Tier II inventory form.

A few states have expressed an interest in using State-designed Tier II inventory forms rather than the Federal inventory form. Under § 370.40 of the final sections 311, 312 regulation, to be published in the near future, facilities will meet section 312 requirements if they submit the Federal form, an identical State form, or an identical State form with supplemental questions authorized under State law. If a submitter wishes to make a trade secrecy claim, however, he must use the Federal form as his section 312 Tier II submittal. Trade secrecy can be more easily determined by EPA by using the Federal form. State forms that collect information under State right-to-know laws are covered under State confidentiality laws.

*F. Claims Under Section 313*

Trade secrecy claims under section 313 must include a copy of the toxic release inventory form. This proposed form is published at 52 FR 21152. Under the proposal, the submitter must check the box on the form indicating a trade secrecy claim and include the generic classification and code preassigned to the chemical identity in § 372.42 of the regulation. EPA is reexamining the use of preassigned generic codes for its final section 313 reporting rule.

EPA must also receive a sanitized copy of the toxic release inventory form which is identical to the original except that the chemical identity will be deleted, leaving the generic class or category. A substantiation for each claimed chemical identity must also be submitted, as described in section II.G. below.

*G. Initial Substantiation*

All claims of trade secrecy for chemical identity must be accompanied by a substantiation for each claim. EPA is planning to use a form for this substantiation. (Section 350.27.) EPA believes this form will assist those persons filing substantiations because the substantiation questions which must be answered are preprinted on the form. These questions are identical to those contained in the regulation.

The substantiation must contain an answer to each of the seven questions posed in the regulation, or an explanation as to why that question is not applicable. These seven questions are based on the four statutory criteria in section 322(b) of Title III. EPA received comment on the proposed sections 311 and 312 regulation that substantiations should only be required after an inquiry as to the specific chemical identity has been received by EPA. EPA considers section 322(a)(2)(A)(ii) of the statute to require an up-front substantiation with each submission. The Conference Report states, "[A] claim [must] be documented at the time the claim is made * * * the claimant must support a claim of trade secrecy with assertions of fact concerning the criteria described below sufficient to show, if such assertions are true, that the specific identity is a trade secret based on those criteria." H.R. CONF. REP. 99–962, 99th Cong., 2d Sess. 303–304 (1986).

More than a short conclusory statement must be made in the substantiation. This is so because EPA is required, under section 322(d) of the statute, to make a determination of "sufficiency" based upon the information submitted in the substantiation. To determine statutory sufficiency, EPA must decide whether, assuming all the information presented in the substantiation is true, it is sufficient to support a claim of trade secrecy. Descriptive factual statements are necessary for this purpose. Also, even though submitters are permitted to submit further detailed information after a petition for disclosure is received or if EPA decides to review a claim on its own, and EPA has found the initial claim sufficient, EPA does not believe that this mitigates the requirement for up-front detailed substantiation. This

submission of additional information, permitted after EPA determines the initial claim is sufficient, is intended to support the truth of the initial assertions and may consist of information in even greater detail than that originally submitted, such as marketing information.

The substantiation questions are designed to elicit specific factual information from the submitter which will support the following section 322(b) statutory requirements for trade secret protection:

(1) The submitter has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures;

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law;

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person; and

(4) The chemical identity is not readily discoverable through reverse engineering.

Information submitted in response to these questions should be as complete as possible. EPA's initial determination as to whether the substantiation is sufficient to support a claim of trade secrecy will be based solely on the information contained in the substantiation. Only if the initial substantiation includes specific information regarding the four factors listed above, will EPA consider the substantiation to be sufficient and allow the submitter to submit further information to show the truth of the assertions in the substantiation, as required by section 322(d) of the statute. The specific criteria for determining whether the substantiation meets the four statutory requirements are set forth in § 350.13.

There are currently seven substantiation questions in § 350.7(a) of this regulation. EPA considered the alternatives of (a) requiring more detailed initial substantiations and (b) requiring no more than a statement of the four factors listed above.

Under the first alternative, the Agency considered initially requiring detailed substantiation like that which must be provided for chemical identity claims for TSCA section 5 Notices of Commencement of Manufacture or Import, 40 CFR 720.85(b). However, this was considered to be overly burdensome to the submitter; moreover, under section 322(d), the Agency may later obtain more detailed information from a submitter to show the truth of the assertions in the initial substantiation.

The second alternative would neither meet the requirements of section 322(a) nor provide EPA with the necessary information to make the determination of sufficiency required by section 322(b). EPA cannot determine the sufficiency of a claim based upon conclusory statements that, for example, disclosure of the chemical identity would cause substantial harm to the competitive position of the submitter. In order for EPA to evaluate such a claim, the Agency would need more information such as the specific use of the substance claimed as trade secret and the value to competitors of knowledge of the presence of the chemical at the facility. If the submitter provided only conclusory statements, this would require the Agency to make further inquiries of each submitter to gain further detail, a time-consuming and costly effort.

Submitters must include a certification with the substantiation, signed by an officer of the submitter, that the information included in the substantiation is true, accurate and complete to the best knowledge and belief of the submitter. This certification is printed on the substantiation form.

Trade secrecy claims with missing substantiations or those lacking a response to each question will be rejected without notice to the submitter, and the chemical identity will be made available to the public. Failure to submit a substantiation with a trade secret claim could make a submitter liable for a fine of up to $10,000 per violation, under section 325(c).

*H. Claims of Confidentiality in the Substantiation*

Sometimes the submitter may need to refer to the chemical identity claimed as trade secret in the substantiation for that chemical. Also, in order to supply a complete explanation of its claim of trade secrecy, the submitter may include other trade secret or confidential business information in the explanation.

Section 322(f) allows submitters to claim as confidential in the substantiation any information which falls within 18 U.S.C. 1905, the Trade Secrets Act. This includes not only trade secret chemical identity but other trade secret information, as well as any confidential business information. To do this, the submitter must clearly label what information it considers to be trade secret or confidential. This copy of the substantiation is to be submitted to EPA, along with a sanitized copy. In the sanitized copy of the substantiation, the submitter will delete all of the claimed trade secret or confidential business information. If any of the information claimed as trade secret on the substantiation is the chemical identity of a claimed chemical, then the submitter should include the appropriate generic class or category of that chemical on the sanitized version of the substantiation.

No substantiation needs to be submitted for information that the submitter includes in the substantiation and claims as trade secret or confidential. The submitter need only include a certification at the bottom of the substantiation, signed by an officer of the submitter, that the information claimed confidential in the substantiation would, if disclosed, reveal other reveal other business or trade secret information. This statement is included in the certification on the substantiation form. The claims of trade secrecy and confidentiality for information submitted in the substantiation are not subject to the petition process described below because this process applies only to claims of trade secrecy for the chemical identity made under Title III. Instead, requests for disclosure of other trade secret or confidential material must be submitted pursuant to the Freedom of Information Act regulations under 40 CFR Part 2.

*I. Submissions to State and Local Authorities*

If a trade secrecy claim is made with respect to a particular submission, only the sanitized version of the submission should be sent to the appropriate State or local authorities. Section 322(a)(2)(ii) also requires that a substantiation be included with the Title III submittal. Therefore, only the sanitized version of the accompanying substantiation should be sent to the appropriate State and local authorities. If a version of a form or a substantiation containing trade secret information is sent to a State or local authority by the submitter, it will constitute public disclosure of the information, and the claim will be considered invalid.

**III. Petition Requesting Disclosure of Chemical Identity Claimed as Trade Secret**

Section 322 provides for a public petition process to request the disclosure of chemical identity claimed as trade secret. This petition process is

applicable only to a chemical identity claimed as trade secret. If requesters desire access to items other than chemical identity claimed as trade secret or confidential in Title III submissions (that is, items claimed as confidential in the substantiation), such requests for disclosure must be made pursuant to EPA's Freedom of Information Act regulations under 40 CFR Part 2.

The petition requesting disclosure must include the petitioner's name, address, and telephone number. It must also include the sanitized copy of the submission (e.g., the MSDS, toxic chemical release form) in which the chemical is claimed as trade secret, and the petitioner must clearly indicate on the form which chemical identity is requested for disclosure. Copies of the sections 303 (d)(2) and (d)(3) filings are available at a location designated by the local emergency planning committee. Copies of the sections 311 and 312 filings are available at locations designated by the State emergency response commission and the local emergency planning committee. Copies of the section 313 filings are available from the public data base maintained by EPA and from the designated State agency.

EPA is requiring a copy of the submission in the proposed rule but has also considered requesting only a reference to the submission. The Agency prefers to require a copy in order to prevent any confusion about what disclosure the petitioner is requesting. Public comment is invited on this issue.

As soon as the petition is filed, EPA will begin the process of reviewing the trade secrecy claim. The time for processing the petition may vary, but the statute requires EPA to reach a decision within 9 months.

## IV. EPA Review of Trade Secrecy Claims

Section 322 defines the process by which EPA determines whether a claimed chemical identity is entitled to trade secrecy. First, EPA must decide whether the answers to the substantiation questions are, if true, sufficient to support the conclusion that the chemical identity is a trade secret. This is the determination of sufficiency referred to in the statute and is made prior to any determination on the validity of the trade secrecy claim. The statute requires EPA to follow different procedures depending on whether EPA decides the answers to the substantiation questions are sufficient or insufficient.

### *A. Overview of the Process*

After receiving a petition requesting disclosure of chemical identity, EPA has 30 days to make a determination of sufficiency. If the claim meets EPA's criteria of sufficiency, EPA will notify the submitter that he has 30 days from the date of receipt of the notice to submit supplemental material in writing, supporting the truth of the assertions made in the substantiation. If this additional information is not forthcoming, EPA will make its determination based only upon information previously submitted in the substantiation. Also, failure to provide such additional material may make the submitter liable for a fine of up to $10,000 per violation, under section 325(c).

If the claim does not meet the criteria of sufficiency, EPA will notify the submitter, who may either file an appeal within 30 days to the Office of General Counsel or, for good cause shown, amend the substantiation in support of its claim.

Once a claim has been determined to be sufficient, EPA must decide whether the claim is entitled to trade secrecy. If EPA determines that the facts support the claim of trade secrecy, the petitioner will be notified. If the chemical identity is determined not to warrant trade secrecy, the submitter will be notified.

The statute provides for intra-agency appeal by the submitter to appeal adverse decisions and for U.S. District Court review after intra-agency appeal. This process is explained below in more detail.

### *B. Determination of Sufficiency*

A person withholding specific chemical identity from a submission under Title III must make specific factual assertions that are sufficient to support a conclusion that the chemical identity is a trade secret. These assertions are made by completely answering all of the questions listed in § 350.7 of the regulation. These questions will provide answers to the four requirements set forth in section 322(b) of the statute for claims of trade secrecy.

Section 350.13 of the regulation sets forth criteria for use by EPA in determining whether the answers in the substantiation fully meet the requirements for section 322(b). The criteria listed in § 350.13 can also serve as a guideline for persons preparing substantiations.

To support the first criterion, the facts must show that reasonable safeguards have been taken against unauthorized disclosure of the specific identity, and that the specific chemical identity has not been disclosed to any person not bound by a written confidentiality agreement including local, State or Federal government entities.

In support of the second criterion, the submitter must show that the chemical identity claimed as trade secret is not required to be released: (1) Under a determination by a State or Federal agency that the chemical identity in question is not a trade secret, or (2) under a State or Federal statute which does not allow the chemical identity to be claimed as trade secret.

To show that disclosure of the information is likely to cause substantial competitive harm, under the third criterion, the facts must show that either competitors do not know that the substance can be used in the fashion used by the submitter and that duplication of the specific use cannot be determined by competitors' own research activities or that competitors are unaware that the submitter is using the substance in this manner.

Finally, it must also be shown that competitors cannot reasonably learn the specific chemical identity through reverse engineering analysis of the submitter's products or environmental releases. For this criterion, EPA will be relying on changes made to OSHA's Hazard Communication Standard in response to the case of *United Steelworker's v. Auchter*, 763 F. 2d 728 (3d Cir. 1985). These regulations are set forth at 50 FR 48750 (November 27, 1985), and 51 FR 34590 (September 30, 1986). In these regulations, OSHA made clear that it was adopting the definition of trade secrecy set forth in the Restatement of Torts, section 757. The Restatement definition of trade secrecy does not include chemical identities which are readily determinable by reverse engineering. The OSHA preamble states, "If the specific chemical identity of a component can be readily determined, it does not qualify as a legitimate trade secret. If the product is a complex mixture, and extensive analysis would be required to determine its ingredients, it is more likely that the product would qualify for some trade secret status." 51 FR at 48753 (November 27, 1985).

If the substantiation does contain sufficient answers, EPA will notify the submitter by certified mail. Under the statute, a finding of sufficiency automatically entitles the submitter to submit supplemental information to support the truth of the answers contained in the substantiation. This could include any information or documents which would demonstrate

the veracity of the submitter's substantiation, or provide even greater detail in support of the submitter's claim. Upon receiving EPA's request for supplemental information, the submitter will have 30 calendar days to submit the information. If EPA does not receive the supplemental information within this time, it will make a trade secret determination based upon the information already submitted. Failure to submit such information, however, may make the submitter liable for a fine of up to $10,000 per violation, under section 325(c).

*C. Determination of Insufficiency*

If a substantiation does not contain answers sufficient to support the four requirements of section 322(b), then EPA will find that the trade secret claim is insufficient. The submitter will be notified by certified mail of EPA's finding of insufficiency. The submitter may either appeal EPA finding to EPA's Office of General Counsel or may amend his original substantiation if it demonstrates good cause to do so.

Good cause is limited to the following:

(1) The submitter was not aware of the facts underlying the additional information at the time the original substantiation was submitted, and could not reasonably have known the facts at that time; or

(2) Neither EPA regulations nor other EPA guidance called for such information at the time the original substantiation was submitted.

The submitter must notify EPA by letter of his contention (1 or 2) as to good cause and should include in that letter the additional supporting material. EPA will notify the submitter by certified mail if the good cause standard has not been met and the additional supporting material will not be accepted. The submitter may then seek review in U.S. District Court. If after acceptance of additional supporting material for good cause, EPA decides the claim is still insufficient, the submitter will be notified by certified mail and may seek review in U.S. District Court.

If EPA reverses itself on appeal or after accepting additional assertions for good cause, and decides that the trade secret claim is sufficient, then the claim will be processed as though it had been initially found to be sufficient. If upon appeal, EPA makes a final determination that the original answers in the substantiation were insufficient, the submitter may request review in U.S. District Court within 30 days of notification of the final determination.

The Small Business Administration has commented that the good cause standard should include the circumstance where a submitter mistakenly does not provide information but otherwise acts in good faith to comply with the rule. EPA believes this is a valid point although it has not included this circumstance as one of the good cause exceptions in the proposed rule. EPA requests comment as to whether this exception should be included in the final rule.

*D. Determination of Trade Secrecy*

All claims determined to be sufficient either initially, after appeal, or after acceptance of additional material for good cause, will be examined in order to determine whether a valid claim of trade secrecy is presented. In making a determination of trade secrecy, EPA will examine all four factors under section 322(b).

If EPA decides that the chemical identity is a trade secret, the petitioner shall be notified by certified mail and may seek review in U.S. District Court. If EPA decides that the chemical identity is not a trade secret, the submitter shall be notified by certified mail and may appeal this determination to EPA's Office of General Counsel within 30 days. If EPA does not reverse its decision on appeal, the submitter may seek review in U.S. District Court within 30 days of notification of the final determination.

*E. Enforcement*

Section 325(d) authorizes the Administrator to assess a civil penalty of $25,000 per claim against a trade secret claimant if the Administrator determines that a trade secret claim is frivolous. Section 325(c) authorizes the assessment of a civil penalty of $10,000 per violation for any person who fails to furnish a substantiation or supplemental information requested by the Agency. These penalties can be assessed by either administrative order or through the appropriate U.S. District Court.

**V. Relation of Section 322 to Other Statutes**

*A. Relationship to State Confidentiality Statutes*

Section 321 of Title III provides that nothing in Title III "shall preempt any State or local law." This means that the confidentiality requirements of Title III are not to displace state confidentiality requirements under State Right-To-Know Acts. A State can still prescribe the type of information it will classify as confidential when it gathers information for its own use under a State law, such as a Right-To-Know Act.

A question has been raised as to what effect State confidentiality statutes will have on information submitted under Title III to State and local authorities. State confidentiality statutes do not govern information gathered under Federal law, here Title III. State confidentiality statutes only apply to information collected pursuant to State law for State use. When information is gathered under Title III, the Federal confidentiality requirements of section 322 apply regardless of whether the information is sent to a State or Federal agency because the information is being gathered pursuant to a Federal statute. In stating this, EPA is assuming that local emergency planning committees will be asking facilities only for information properly falling under Title III. EPA has published guidance to aid committees in gathering this information. This guidance is entitled the Hazardous Materials Emergency Planning Guide. It is available by writing to the Hazardous Materials Emergency Planning Guide, 401 M Street SW., Mail Code WH 562–A, Washington, DC 20460. Additional site-specific technical guidance for hazards analysis will be available this fall. A notice announcing this availability will appear in the **Federal Register**.

State confidentiality statutes may affect Title III information, however, in that if State trade secrecy regulations prohibit claims of trade secrecy under State law for information that a submitter must also report under Title III, then under the substantiation provisions of Title III, a facility will not be able to justify withholding the information under Title III.

*B. Overlap with Other EPA-Administered Statutes*

Information collected pursuant to EPA regulations under statutes other than Title III may be similar to that collected under Title III. For purposes of confidentiality, information should be claimed as confidential and will be treated by EPA as is required by the statute under which it is collected. However, the mandatory release of information under one statute may affect its trade secret status under another statute.

*C. Relationship to Freedom of Information Act*

The procedures set out in section 322 apply only to claims of trade secrecy for chemical identity made under Title III. Pursuant to section 322(f), however, submitters may claim as trade secret any other confidential business or trade secret information which is included in

the substantiation, or supplemental information submitted in the petition process. Requests for disclosure of this material must be submitted under the Freedom of Information Act regulations at 40 CFR Part 2. EPA will make determinations regarding the disclosure of this material under those regulations.

## VI. Release of Trade Secret Information

### *A. Releases to States*

Under section 322(h), the States, either the governors or the State emergency response commissions, must provide to any requesting person the adverse health effects associated with extremely hazardous substances (section 303) and hazardous chemicals (sections 311 and 312) claimed as trade secret. The States will not have direct access to the identities of chemicals claimed as trade secret in preparing adverse health effects descriptions. However, the States have information on health effects in the MSDSs submitted under section 311 for this purpose. The MSDS is required to include such information for any substance claimed as trade secret. Thus, governors or State commissions should not be hindered in meeting their responsibilities to provide descriptions of adverse health effects.

Under Title III, EPA is required to provide to the States, upon request by the governor, any trade secret information submitted to EPA. Thus, if a State wished to request the chemical identities of any or all chemicals claimed as trade secret in the State, EPA will provide this information to the State governor, upon request.

This proposed regulation contains certain requirements intended to safeguard the disclosure of trade secret information released to the States. The Agency is concerned that there is a potential for leakage of Title III information used by various State agencies unless information is carefully guarded.

The proposed regulation specifies that the State governor can release trade secret information only to State employees. This requirement has the effect of preventing disclosure of trade secret information to State emergency response commissions (SERCs), although the SERCs are allowed by statute to identify adverse health effects. The SERCs are appointed by the governors and are comprised of members who have technical experience in the emergency response field, including industry representatives that meet this qualification. Rather than impose restrictions on SERC membership or jeopardize the confidentiality of trade secrets, the regulation confines the disclosure of trade secret information to State employees. Also, State employees who knowingly and willfully disclose trade secret information are subject to a fine and possible conviction under section 325(d)(2).

The Agency is requiring that States treat all trade secret information as limited access information to be used by the States only by staff observing security procedures equivalent to those of EPA. The Agency feels that this approach is appropriate to adequately protect trade secret information. EPA will publish information on security procedures in the future.

The Agency is requesting comments on all aspects of disclosure of trade secret information to State governors.

### *B. Releases to Authorized Representatives of EPA*

In addition to contractors and subcontractors, EPA has recently begun to use grantee personnel to perform Agency functions. The Agency believes it is appropriate to designate them as "authorized representatives," along with Federal contractors and subcontractors, as that term is used in this regulation. Full confidentiality protection would be required, as with contractors. Comment is requested on this issue.

## VII. Disclosure to Health Professionals

Section 323 of Title III consists of three provisions regarding access to chemical identity information by health professionals. These provisions require the facility owner or operator to disclose chemical identity, including trade secret chemical identity, to a health professional for diagnosis or treatment in both non-emergency and emergency situations, and for purposes of conducting preventive research studies and providing medical treatment by a health professional who is a local government employee. The health professional must sign a statement regarding his need for the chemical identity, and a confidentiality agreement, prior to disclosure, except in emergency situations, when these two documents may be delivered later.

### *A. Non-emergency Diagnosis or Treatment*

The first provision, part (a) of section 323, requires that in non-emergency situations, an owner or operator of a facility which is subject to the requirements of sections 311, 312 or 313, shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to a health professional who requests the identity in writing and describes a reasonable basis for suspecting that the specific chemical identity is needed for diagnosis or treatment of an individual or individuals who have been exposed to the chemical concerned. The health professional must also state that knowledge of the specific chemical identity will assist in diagnosis or treatment of the exposed individual(s). The health professional must certify that the information contained in the statement of need is true and accurate. The health professional must also provide a signed confidentiality agreement to the facility prior to gaining access to trade secret chemical identity. Any health professional performing diagnosis or treatment, not solely doctors or nurses, is permitted access to trade secret chemical identity in a non-emergency situation. The request for and safeguarding of trade secrets is a serious responsibility and EPA urges health professionals to use other available information about a chemical for diagnosis, treatment, or research studies if possible.

### *B. Emergency Situations*

The second provision of section 323 deals with medical emergencies and requires an owner or operator of a facility subject to the requirements of sections 311, 312 or 313 to immediately provide a copy of an MSDS, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests the information and has determined that a medical emergency exists and that the specific chemical identity of the chemical is necessary for emergency or first-aid diagnosis or treatment of an exposed individual or individuals. Only a treating physician or nurse can gain access to a trade secret chemical under this provision; these health professionals must use their professional judgment to determine whether a medical emergency exists. The requesting physician or nurse in such an emergency does not need to submit a written confidentiality agreement or statement of need prior to receiving the trade secret chemical identity. The owner or operator disclosing such information may, however, require a written confidentiality agreement and a statement of need as soon as circumstances permit. The fact that a treating physician or nurse does not need to submit a confidentiality agreement or statement of need before

receiving the requested information does not imply that the information received may be used in any manner other than the proper treatment and diagnosis of a chemically related injury or illness. The chemical identity absolutely may not be disclosed or used for any other purpose.

*C. Preventive and Treatment Measures*

The third provision of section 323 deals with preventive and treatment measures by local health professionals. This subsection is intended to allow local health professionals access to information on chemicals in order to facilitate epidemiological and toxicological research and to render medical treatment for the effects of chemical exposures. This subsection requires an owner or operator of a facility to promptly provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional who is a local government employee or under contract with a local government who submits a request in writing and provides a written statement of need and a confidentiality agreement. The statement of need must describe one or more of the needs set forth in the regulations.

Under this section of the statute, EPA interprets the term health professional to be any health professional with the professional expertise to perform the types of research and treatment set forth in the statute, and who is employed by the local government. Under this section, such health professionals as physicians, toxicologists and epidemiologists may gain access to trade secret chemical identity.

*D. Statement of Need*

Unlike the Occupational Safety and Health Act Hazard Communication Standard, the health professional providing medical treatment will not be required to explain in detail in the statement of need why the disclosure of the specific chemical identity is essential, and that in lieu thereof, the disclosure of the following information would not enable the health professional to provide the medical services: (a) The properties and effects of the chemical, (b) measures for controlling the public's exposure to the chemical, (c) methods of monitoring and analyzing the public's exposure to the chemical, and (d) methods of diagnosing and treating harmful exposure to the chemical. EPA requests comment on whether this information should be included in the statement of need.

EPA decided to require certification in the statement of need in order to encourage requesters to understand the serious responsibility involved in handling trade secret material. The certification must be signed by the health professional and must state that the information contained in the statement of need is true.

*E. Confidentiality Agreement*

The confidentiality agreement required of the health professional must state that the health professional will not use the trade secret chemical identity for any purpose other than the health needs asserted in the statement of need, or as may otherwise be authorized by the terms of the agreement itself. This agreement may be negotiated between the health professional and the facility.

At a minimum, the written confidentiality agreement shall include a description of the procedures to be used to maintain the confidentiality of the disclosed information and a statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need. Also, the health professional must agree not to release the information under any circumstances, except as authorized by the terms of the agreement. For example, the terms of the agreement could specify that the health professional may release the trade secret chemical identity to other health professionals if the professionals work on a daily basis with each other and routinely rely on each other's expertise for needed advice. The agreement could also specify that the first health professional may disclose the trade secret chemical identity to other health professionals if such disclosure is necessary in order for the first professional to learn necessary information in order to render a professional opinion. Except in those instances specified in the confidentiality agreement, the health professional may not be permitted to release the information to other health professionals. The health professional may not be permitted to write articles for medical journals or to go on speaking tours discussing the chemical involved if such activity could result in the disclosure of the identity of the chemical and the facility's relationship to that chemical. Such activities could be permitted, however, if the link between the facility and the chemical identity would not be revealed.

The agreement may provide for appropriate legal remedies in the event of a breach, including a reasonable pre-estimate of damages. However, the agreement cannot include a requirement that a penalty bond be posted. This would have a chilling effect on the health professional community. The Agency believes that the underlying purpose of the confidentiality agreement is to protect a facility's trade secret chemical identity from unlimited and unbridled disclosure, not to make it overly burdensome or difficult for the health professional to obtain the specific identity of a chemical.

This confidentiality agreement is subject to State law and State contractual remedies. The agreement can specify the law of the State that will apply. Also, nothing in this regulation precludes the facility or health professional from pursuing non-contractual remedies to the extent permitted by law.

*F. Related Issues*

Following the receipt of a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the health professional. EPA has considered specifically defining "promptly" and "immediately" to mean a particular number of days. However, EPA is concerned that defined times will limit the speed of response. Comment is requested on this issue. The statute requires "immediate" provision of data in the case of medical emergencies and EPA interprets this to mean that the owner or operator will provide the data over the telephone, without requiring a written statement of need or a confidentiality agreement in advance. Comment is also requested on this issue.

The Agency is aware of the possible situation where the owner or operator of a facility is unable to provide the chemical identity because the manufacturer of the chemical has kept the identity confidential. In these situations, EPA suggests that the owner or operator of the facility put the requester in touch with the supplier of the chemical, but the facility is not responsible for supplying information which it cannot obtain for itself. EPA requests comment on this approach.

The regulation authorizes health professionals to refer to trade secret chemical identity in discussions with EPA personnel, who themselves are authorized to have access to Title III trade secret information. This is based on a provision of the OSHA Hazard Communication Standard. If this provision was not included in the regulation and the confidentiality agreement does not so provide, the health professional would not be permitted to reveal or refer to any trade secret identity information in

discussions with EPA. EPA requests comment on this issue.

EPA construes section 323 to mean that a facility is not permitted to deny disclosure of a specific chemical identity to a health professional under any circumstances provided there is a written statement of need and a confidentiality agreement. Section 325(c) empowers EPA to assess civil penalties of up to $10,000 for failure to disclose the trade secret chemical identity to health professionals in emergency situations, as required by Section 323(b). Health professionals may also sue under section 325(e) in U.S. District Court to obtain the information.

## VIII. Summary of Supporting Analyses

### *A. Regulatory Impact Analysis*

1. *Purpose.* Executive Order No. 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order and to prepare and consider a Regulatory Impact Analysis (RIA) in connection with each major rule. EPA has determined that the requirements and procedures for treatment of chemical data considered to be trade secret by facilities reporting under other sections of Title III in this rulemaking does not constitute a major rule under Executive Order No. 12291. However, the Agency has prepared an RIA to assess the economic impact of the final regulation on affected industry and government entities. The following results are presented in detail in the analysis documented in *Regulatory Impact Analysis in Support of Proposed Rulemaking Under Sections 322–323 of the Superfund Amendments and Reauthorization Act of 1986,* which is available for review in the public docket for this rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by E.O. No. 12291.

2. *Methodology and Data Sources.* EPA conducted an assessment of the costs, benefits, and economic impacts associated with the final rule and the primary provisions of sections 322 and 323, including: Preparation of trade secrecy claims by facilities; processing and storage of trade secret reports by EPA; provisions by EPA and the States of health effects information for chemicals whose identities are withheld as trade secrets; and special access procedures under which facilities must promptly provide chemical data to members of the health profession. Both industry and government are required by sections 322 and 323 of title III to undertake certain activities, and thus, both types of entities will incur costs to comply with this regulation implementing these sections.

Benefits for both facilities and government may also arise in conjunction with trade secret activities. In addition, industry, government, and other groups may, as a result of this regulation, undertake additional voluntary activities that generate benefits both for these groups as well as the general community. Interrelationships among the activities undertaken by the various affected groups, the provisions of Title III, and potential consequences for health and the environment are complex. Thus, time constraints did not permit EPA to perform a quantitative evaluation of the benefits of these provisions; a qualitative discussion of the benefits is provided in the RIA.

Costs of complying with sections 322 and 323 of Title III are incurred by facilities and the Agency in terms of the following major activities: protection of trade secrets for facilities complying with sections 303(d)(2), 303(d)(3), 311, 312, and 313; the petition and review process designed to ensure that the public obtains access to reported information that is found to not warrant trade secrecy protection; provision of adverse health effects information in lieu of chemical identities where facilities have disclosed only generic or category information on the materials involved; and, special access, as needed, for members of the health profession for diagnosis, treatment, medical emergency, and health study purposes. Total costs of these activities are highly sensitive to assumptions concerning: The number of reports submitted by facilities under sections 303, 311, 312, 313; the number of reports for which facilities claim trade secrets; the number of petitions submitted by the public to challenge facility claims of trade secrecy; the number of health officials requesting trade secret information; and the unit costs associated with each of the activities.

Both the industry and government analyses assume that reporting and receiving entities undertake the minimum activities that they must perform to comply with Title III. The anlaysis, therefore, does not take into account the costs associated with voluntary activities, alterations in chemical usage patterns that may arise at facilities as a result of other sections of Title III, or other activities or effects.

Several supplemental analyses were performed to provide evidence on the sensitivity of the results to changes in various assumptions of the methodology. In particular, a sensitivity model was performed of the potential variability of substantiation costs reflecting EPA's list of questions that it feels are necessary to establish the sufficiency and validity of a claim for trade secrecy; and, the assumption that facilities will answer the questions with reasonably detailed research and responses. Also included is an analysis of the effects of sections 322 and 323 on small businesses and the analytical factors affecting whether a Regulatory Flexibility Analysis would be required for the proposed regulation. In particular, a definition of small businesses or entity sizes was set forth and a determination as to whether the regulation will have a significant impact upon a substantial number of small entities was considered.

3. *Results.* The RIA analyzes the specific requirements of sections 322 and 323 as established by the statute and the proposed regulation implementing these sections of the Act. The RIA analyzes four activity areas under sections 322 and 323 for facilities and EPA, in particular: Preparation, processing and storage of trade secret reports, petition and review process, provision of adverse health effects information, and disclosure of information to health professionals.

a. *Preparation, Processing and Storage of Trade Secret Reports.* A facility must prepare a trade secret copy of a given Title III report and send it to EPA with an accompanying trade secrecy substantiation. A trade secrecy substantiation (based upon the proposed form) costs approximately from $380 to $1,040 for the first chemical that a facility claims as trade secret, depending upon the level of effort a firm puts into responding to questions on the proposed form. Given certain possibilities for economies of scale where a facility provides substantiations for more than one chemical, each additional substantiation is estimated to cost $220 to $560 for the facility to prepare (these costs do not include the costs of preparing the non-trade secret copy of a Title III report).

EPA will incur costs for processing and storing each of the reports containing trade secret information. EPA will treat as confidential any information properly claimed as trade secret until a review is conducted demonstrating otherwise. The cost to EPA of processing (logging in) and storing (filming, microfilming) trade secret reports is estimated to be less than $10 per report.

b. *Petition and Review Process.* A major provision of section 322 is the opportunity for members of the public to

challenge a facility's claim to the trade secrecy of a chemical's identity through a petition and review process administered by EPA. The estimated costs of the three most likely scenarios of the petition and review process include cases where a facility is found to have a claimed trade secret without a valid basis; a case where the facility has a valid basis; and, a case with many complications in the petition and review process.

In the cases where a facility claims a trade secret without a valid basis, petitioner costs are estimated to be $75 per petition, EPA costs are $593 per petition, and, facility costs are $222 per petition. In the cases where a facility has a valid basis, petitioner costs and facility costs remain the same with an EPA cost of $368 per petition. In cases with many complications in the petition and review process, the petitioner cost are $75 per petition, but EPA costs could be $1,325 per petition, and facility costs are $1,048 per petition.

c. *Provision of Adverse Health Effects Information.* A responsibility is created under section 322 to provide requesters with information on the health hazards of chemicals where specific chemical identity is withheld as trade secret. There is no additional cost to the Agency here; the States will be able to use the MSDSs to provide the public with adverse health effects for chemicals claimed as trade secret under sections 303, 311 and 312. The Agency will already have a listing on the section 313 database of adverse effects for chemicals claimed as trade secret under section 313.

d. *Disclosure of Information to Health Professionals.* Section 323 provides for special access to reported data for health professionals. There are three circumstances for which section 323 sets up special access for health professionals to specific chemical identities or reports: diagnosis or treatment, medical emergencies, and preventive studies of exposure or treatment by local health professionals.

e. *Aggregate Costs.* Total costs (both for facilities and for EPA) are largely related to the number of trade secret claims made in any time period. These are expected to total about $48 million in the first year, drop to $13 million in the second, rise to $169 million in the third, and level off at $23 million for each succeeding year.

The total cost picture is dominated by trade secret claims associated with the submission of MSDSs under section 311. Over the first ten years of the program, these trade secret claims are estimated to account for over 90 percent of all Title III trade secret claims.

The aggregate cost of preparation, petition and review, health effects descriptions, and disclosure of information to health professionals of Title III reports in this medium case projection in present value terms over 10 years, at a 10 percent real discount rate will be $263 million to facilities, and $3.8 million for EPA.

The aggregate cost of the preparation, petition and review process, health effects descriptions, and disclosure of information to health professionals in present value terms over 10 years, at a 4 percent real discount rate will be $329 million to facilities, and $4.8 million for EPA.

With the section 311 and 312 rules so recently published by EPA, and with the publication on August 24, 1987, of the OSHA rulemaking expanding coverage of facilities required to report under sections 311 and 312, EPA has not been able to estimate accurately the added costs of the trade secret provisions. However, analysis conducted for the sections 311/312 rulemaking estimates that the total number of reports to be filed would roughly double, as compared with the coverage prior to the OSHA expansion. EPA intends to look further into the effects of the OSHA expansion prior to promulgation of this rule and requests information from commentors on how unit costs might differ for the newly covered facilities and the likely frequency of trade secret claims.

f. *Benefits.* Section 322 fosters benefits both directly and indirectly. Direct benefits include the following: Facilities are given protection of trade secrets involving their chemicals, which by definition involve information that allows particular firms competitive advantages over others; the public is given a petition and review process that allows them to challenge the validity of trade secrecy claims through an administrative review process; the substantiation requirements will limit the number of trade secrecy claims to cases where firms believe that they have a bona fide basis for trade secrecy; and, information on the health hazards of chemicals is made available to the public while the specific chemical identities are kept from disclosure where facilities have established valid trade secrecy claims. The first two benefits serve to reduce the costs that are incurred by virtue of the other Title III sections (i.e., costs that were not accounted for in the other RIA's). Indirectly, section 322 has benefits as an auxiliary section that makes detailed reporting under sections 303(d)(2), 303(d)(3), 311, 312, and 313 practical, given the competing interests of facilities with a need for protection of trade secrets and the public with a need to know about exposure to chemical health hazards. Without the protections of section 322, many facilities would be reluctant to fully disclose the information required under Title III and as a result, the efficacy of the entire program would be compromised. Allowing trade secrecy claims effectively encourages complete reporting and thus increases the benefits of the entire Title III program.

Section 323 offers specific benefits in the case of medical emergencies, where exposure to chemicals can lead to debilitating or fatal consequences for workers, residents, and others. Prompt disclosure of information by facilities to health professionals will accelerate their ability to diagnose incidents properly and bring the necessary type of treatment into effect.

*B. Regulatory Flexibility Analysis*

1. *Purpose.* Under the Regulatory Flexibility Act, whenever an Agency is required to issue for publication in the **Federal Register** any proposed or final rule, it must prepare and make available a Regualtory Flexibility Analysis that describes the impact of the rule on small entities (small businesses, small organizations and small governmental jurisdictions), unless the Agency's administrator certifies that the rule will not have a significant impact on a substantial number of small entities. The analysis contained in the RIA addresses the impact of this rule on small entities. Based on this analysis, EPA has concluded that while a large number of small businesses reporting under Title III could be affected, costs will generally be low per facility and significant impacts will not occur.

2. *Methodology and Results.* To examine the impacts on small businesses, EPA compared average costs for small facilities (defined to be those with fewer than 20 employees) to average and median sales for those facilities, and by two digit SIC code.

There are a substantial number of small businesses under this definition; 2,794,400 facilities (the universe of facilities in categories covered by section 303, the broadest of the sections associated with trade secrecy claims). The number of projected trade secret claims—37,000 to 1,114,600—is large enough to affect over 20 percent of small businesses if evenly distributed across facilities.

In order to assess the impacts on small businesses, several guidelines were used. The first criterion is the ratio of annual costs of facilities engaged in manufacturing, with production costs

represented by sales. A worst case scenario is provided by assuming an average in the high projection of 3 chemicals per facility and assuming detailed responses to the proposed substantiation questions. Average first year reporting per facility costs of industry for small businesses, by SIC code, is $885. Average annual costs are significantly lower. As a percent of average sales, the range is between 0.00 to 0.40 percent of sales, which is well below EPA's guideline criterion of 5 percent of production costs in order to avoid significant impact.

3. *Certification.* On the basis of the analyses contained in the RIA with respect to the impact of this rule on small entities, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis.

*C. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements can be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA". The final rule will respond to any OMB or public comments on the information collection requirements.

**List of Subjects in 40 CFR Part 350**

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Superfund Amendments and Reauthorization Act, Trade secrets, Trade secrecy claims, Intergovernmental relations.

Dated: October 6, 1987.

**Lee M. Thomas,**

*Administrator.*

Therefore, it is proposed that Title 40 of the Code of Federal Regulations be amended by adding a new Part 350 to read as follows:

## PART 350—TRADE SECRET CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION: AND TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS

**Subpart A—Trade Secret Claims**

350.1 Definitions.
350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR Part 2.
350.5 Assertion of claims of trade secrecy.
350.7 Substantiating claims of trade secrecy.
350.9 Initial action by EPA.
350.11 Review of claim.
350.13 Sufficiency of assertions.
350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.
350.16 Address to send trade secret claims and petitions requesting disclosure.
350.17 Appeals.
350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.
350.19 Provision of information to States.
350.21 Adverse health effects.
350.23 Disclosure to authorized representatives.
350.25 Disclosure in special circumstances.
350.27 Substantiation form to accompany claims of trade secrecy.

**Subpart B—Disclosure of Trade Secret Information to Health Professionals**

350.40 Disclosure to health professionals.

**Authority:** 42 U.S.C. 11042 and 11043 Pub. L. 99-499, 100 Stat. 1747. Subpart A—Trade Secret Claims

**§ 350.1 Definitions.**

"Administrator" and "General Counsel" mean the EPA officers or employees occupying the positions so titled.

"Business confidentiality" includes the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its right in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905.

"Petitioner" is any person who submits a petition under this regulation requesting disclosure of a chemical identity claimed as trade secret.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance. Where the trade name is reported in lieu of the specific chemical identity, the trade name will be treated as the specific chemical identity for purposes of this part.

"Submitter" means any person submitting a trade secret claim under sections 303(d)(2) and (d)(3), 311, 312 and 313 of Title III.

"Substantiation" means the written answers submitted to EPA by a submitter to the specific questions set forth in this regulation in support of a claim that chemical identity is a trade secret.

"Trade secrecy claim" is a submittal under sections 303(d)(2) or (d)(3), 311, 312 or 313 in which a chemcial identity is claimed as trade secret, and is accompanied by a substantiation in support of the claim of trade secrecy for chemical identity.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in a submitter's business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it.

"Working day" is any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days; all other days are.

**§ 350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR Part 2.**

(a) *Applicability of subpart.* Sections 350.1 through 350.40 establish rules governing assertion of trade secrecy claims for chemical identity information collected under the authority of sections 303(d)(2) and (d)(3), 311, 312 and 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, and for trade secrecy or business confidentiality claims for information submitted in a substantiation under sections 303(d)(2) and (d)(3), 311, 312, and 313. This subpart also establishes rules governing petitions from the public requesting the disclosure of chemical identity claimed as trade secret, and determinations by EPA of whether this information is entitled to trade secret treatment. Claims for confidentiality of the location of a hazardous chemical under section 312(d)(2)(F) of Title III are not subject to the requirements of this subpart.

(b) *Priority where provisions conflict.* Where information subject to the requirements of this subpart is also collected under another statutory authority, the confidentiality provisions of that authority shall be used to claim that information as trade secret or confidential when submitting it to EPA under that statutory authority.

(c) *Interaction with Freedom of Information Act procedures.* (1) No trade secrecy or business confidentiality claims other than those allowed in this subpart are permitted for information collected under sections 303(d)(2) and (d)(3), 311, 312, and 313.

(2) Request for access to chemical identities withheld as trade secret under this regulation is solely through this regulation and procedures hereunder,

not through EPA's Freedom of Information Act procedures, set forth at 40 CFR Part 2.

(3) Request for access to information other than chemical identity submitted to EPA under this regulation is through EPA's Freedom of Information Act regulations at 40 CFR Part 2.

**§ 350.5 Assertion of claims of trade secrecy.**

(a) A claim of trade secrecy may be made only for the specific chemical identity (and other specific identifier) of an extremely hazardous substance under sections 303(d)(2) and (d)(3), a hazardous chemical under sections 311 and 312, and a toxic chemical under section 313.

(b) Method of asserting claims of trade secrecy for information submitted under sections 303(d)(2) and (d)(3).

(1) In submitting information to the local emergency planning committee under sections 303(d)(2) or (d)(3), the submitter may claim as trade secret the specific chemical name (and other specific identifier) of any chemical subject to section 303 reporting.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) A copy of the information which is being submitted under sections 303(d)(2) or (d)(3) to the local emergency planning committee with the chemical identity or identities claimed trade secret clearly labeled "TRADE SECRET." In parentheses after each chemical identity claimed as trade secret should be included the generic class or category of the chemical. The generic class or category for section 303 chemicals is set forth in paragraph (f) of this section.

(ii) A sanitized copy of the document described in paragraph (b)(2)(i) of this section, which is to be identical to that document except that the submitter shall delete the chemical identity or identities claimed as trade secret, leaving the generic class or category of the chemical or chemicals. This copy shall be sent by the submitter to the local emergency planning committee, which shall make it available to the public.

(iii) A substantiation in accordance with § 350.7 for each chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 303 claims shall be sent to the address specified in § 350.16 of this regulation.

(c) Method of asserting claims of trade secrecy for information submitted under section 311.

(1) Submitters may claim as trade secret the chemical identity (and other specific identifier) of any chemical subject to reporting under section 311 in the material safety data sheet or chemical list under section 311.

(2) To assert a claim the submitter shall submit to EPA the following:

(i) A copy of the material safety data sheet or chemical list under section 311. The submitter shall clearly indicate the specific chemical identity claimed as trade secret, and shall label it "TRADE SECRET." The generic class or category of the chemical claimed as trade secret shall be inserted directly below the claimed chemical identity. The generic class or category for chemicals subject to section 311 is set forth in paragraph (f) of this section.

(ii) A sanitized copy of the material safety data sheet or chemical list under section 311. This copy shall be identical to the document in paragraph (c)(2)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret, leaving in place the generic class or category of the chemical claimed as trade secret. This copy shall be sent by the submitter to the State emergency response commission, the local emergency planning committee and the local fire department, which shall make it available to the public.

(iii) A substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 311 claims shall be sent to the address specified in § 350.16 of this regulation.

(d) Method of asserting claims of trade secrecy for information submitted under section 312.

(1) Submitters may claim as trade secret the chemical identity (and other specific identifier) of any chemical subject to reporting under section 312.

(2) To assert a claim the submitter shall submit to EPA the following:

(i) A copy of the Tier II emergency and hazardous chemical inventory form under section 312. (The Tier I emergency and hazardous chemical inventory form does not require the reporting of specific chemical identity and therefore no trade secrecy claims may be made with respect to that form.) The submitter shall clearly indicate the specific chemical identity claimed as trade secret by checking the box marked "trade secret" next to the claimed chemical identity.

(ii) A sanitized copy of the Tier II emergency and hazardous chemical inventory form. This copy shall be identical to the document in paragraph (d)(2)(i) of this section except that the submitter shall delete the chemical identity or identities claimed as trade secret and include instead the generic class or category of the chemical claimed as trade secret. The generic class or category for chemicals subject to section 312 is set forth in paragraph (f) of this section. The sanitized copy shall be sent by the submitter to the State emergency response commission, local emergency planning committee or the local fire department, whichever entity requested the information.

(iii) A substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 312 claims shall be sent to the address specified in § 350.16 of this regulation.

(e) Method of asserting claims of trade secrecy for information submitted under section 313.

(1) Submitters may claim as trade secret the chemical identity (and other specific identifier) of any chemical subject to reporting under section 313.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) A copy of the toxic release inventory form under section 313 with the information claimed as trade secret clearly identified. To do this, the submitter shall check the box on the form indicating that the chemical identity is being claimed as trade secret. The submitter shall enter the generic classification name and code that is preassigned by 40 CFR 372.42 to that specific toxic chemical.

(ii) A sanitized copy of the toxic release inventory form. This copy shall be identical to the document in paragraph (e)(2)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret. This copy shall be submitted to the State official or officials designated to receive this information.

(iii) A substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 313 claims shall be sent to the address specified in § 350.16 of this regulation.

(f)(1) Method of choosing generic class or category for sections 303, 311 and 312. A facility owner or operator claiming chemical identity as trade secret under sections 303, 311, or 312 should engage in discussion with the state emergency response commission, local emergency planning committee, or local fire department to choose an appropriate generic class or category which suitably reflects the hazards of the release, preventive techniques to guard against the release, adverse health effects associated with the release, and any other significant safety information.

(2) Method of choosing generic class or category for section 313. A facility owner or operator claiming chemical identity as trade secret should choose the generic class or category of the chemical preassigned to the chemical identity in 40 CFR 372.42.

(g) No trade secrecy claim shall be considered to be asserted unless the submittal in which it is made is accompanied by a substantiation under § 350.7. A submittal containing a trade secrecy claim and unaccompanied by a substantiation shall be summarily rejected without further notice to the submitter.

(h) If a specific chemical identity is submitted under Title III to EPA, or to a State emergency response commission, designated State agency, local emergency planning committee or local fire department, without asserting a trade secrecy claim, the chemical identity shall be considered non-trade secret and may be disclosed without notice to the submitter.

(i) A submitter making a trade secrecy claim under this section shall submit to entities other than EPA (e.g., a designated State agency, local emergency planning committee and local fire department) only the sanitized copy of the submission and substantiation.

**§ 350.7 Substantiating claims of trade secrecy.**

(a) Claims of trade secrecy must be substantiated by providing a specific answer to each of the following questions with the submission to which the trade secrecy claim pertains. Submitters must answer these questions on the form entitled "Substantiation to Accompany Claims of Trade Secrecy" in § 350.27 of this subpart.

(1) Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret.

(2) Have you disclosed this chemical identity to any person not an employee of your company or of a local, State or Federal government entity, who has not signed a confidentiality agreement requiring the person to refrain from disclosing the chemical identity to others?

(3) List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

(4) In order to show the validity of a trade secrecy claim, you must identify your specific use of the substance claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical substance, identifying the product or process in which it is used. (If you use the substance other than as a component of a product or in a manufacturing process, identify the activity where the substance is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity of the substance in publications or other information available to the public (of which you are aware)? Is this linkage known to your competitors? If the answer to either question is yes, explain why this knowledge does not eliminate the justification for trade secrecy.

(iii) If this use of the substance is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

(iv) Explain why your use of the substance would be valuable information to your competitors.

(5) Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, including an estimate of the potential loss in sales or profitability.

(6) To what extent is the substance available to the public or your competitors in products, articles, or environmental releases? Describe the factors which influence the cost of determining the identity of the substance by chemical analysis of the product, article, or waste which contains the substance (e.g., whether the substance is in pure form or is mixed with other substances), and provide a rough estimate of that cost.

(7) Is the substance, or your use of it, subject to any U.S. patent of which you are aware? If so, identify the patent and explain why—

(i) It does not connect you with the substance, and

(ii) Why it does not protect you from competitive harm.

(b) The answers to the substantiation questions listed in paragraph (a) of this section are to be included with a claimant's trade secret claim, on the form in § 350.27 of this subpart.

(c) An officer of the submitter shall sign the certification on the bottom of the form contained in § 350.27, stating that the information included in the substantiation is true, accurate and complete to the best knowledge and belief of the submitter.

(d) Claims of confidentiality in the substantiation. (1) The submitter may claim as confidential any trade secret or confidential business information contained in the substantiation. Such claims for material in the substantiation are not limited to claims of trade secrecy for chemical identity, but may also include claims of confidentiality for any confidential business information. To claim this material as confidential, the submitter shall clearly designate those portions of the substantiation to be claimed as confidential by marking those portions "CONFIDENTIAL," "PROPRIETARY," or "TRADE SECRET." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(2) An officer of the submitter shall sign the certification stating that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. This certification is combined on the substantiation form in § 350.27 with the certification described in paragraph (c) of this section.

(3) The submitter shall submit to EPA two copies of the substantiation, one of which shall be the unsanitized version, and the other shall be the sanitized version.

(i) The unsanitized copy shall contain all of the information claimed as trade secret or business confidential, marked as indicated in paragraph (d)(1) of this section.

(ii) The second copy shall be identical to the first copy of the substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the substantiation is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or

category of the chemical claimed as trade secret. This sanitized copy shall be submitted to the State emergency response commission, a designated State agency, the local emergency planning committee and the local fire department, as appropriate.

(e) Supplemental information. (1) EPA may request supplemental information from the requester in support of its trade secret claim, pursuant to § 350.11(a)(i). EPA may specify the kind of information to be submitted, or the submitter may submit any additional detailed information which further supports the information previously supplied to EPA in its initial substantiation, under § 350.7.

(2) The submitter may claim as confidential any trade secret or confidential business information contained in the supplemental information. To claim this material as confidential, the submitter shall clearly designate those portions of the supplemental information to be claimed as confidential by marking those portions "CONFIDENTIAL," "PROPRIETARY," or "TRADE SECRET." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(3) If portions of the supplementary information are claimed confidential, an officer of the submitter shall certify that those portions of the supplemental information claimed as confidential would, if disclosed, reveal the chemical identity being claimed as confidential or would reveal other confidential business or trade secret information.

(4) If supplemental information is requested by EPA and the submitter claims portions of it as trade secret or confidential, then the submitter shall submit to EPA two copies of the supplemental information, an unsanitized and a sanitized version.

(i) The unsanitized version shall contain all of the information claimed as trade secret or business confidential, marked as indicated above in paragraph (e)(2) of this section.

(ii) The sanitized version shall be identical to the unsanitized version except that all of the information claimed as trade secret or confidential shall be deleted.

**§ 350.9 Initial action by EPA.**

(a) When a claim of trade secrecy, made in accordance with § 350.5 above, is received by EPA, that information is treated as confidential until a contrary determination is made.

(b) A determination as to the validity of a trade secrecy claim shall be initiated upon receipt by EPA of a petition under § 350.15 or may be initiated at any time by EPA if EPA desires to determine whether chemical identity information claimed as trade secret is entitled to trade secret treatment, even though no request for release of the information has been received.

(c) If EPA initiates a determination as to the validity of a trade secrecy claim, the procedures set forth in §§ 350.11, 350.15, and 350.17 shall be followed in making the determination.

(d) When EPA receives a petition requesting disclosure of trade secret chemical identity or if EPA decides to initiate a determination of the validity of a trade secret claim for chemical identity, EPA shall first make a determination that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same facility, or if it is, that the determination upheld the facility's claim of trade secrecy for that chemical identity. If such a prior determination held that the facility's claim for the chemical identity is invalid, EPA shall notify the petitioner that the chemical identity claimed trade secret is the subject of a prior determination concerning the same facility in which it was held that such a claim was invalid, and EPA shall release the claimed chemical identity to the public.

**§ 350.11 Review of claim.**

(a) *Determination of sufficiency.* When EPA receives a petition submitted pursuant to § 350.15, or if EPA initiates a determination of the validity of a trade secret claim for chemical identity, and EPA has made the determination required in paragraph (d) of § 350.9, then EPA shall determine whether the submitter has presented sufficient support for its claim of trade secrecy in its substantiation. EPA must make such a determination within 30 days of receipt of a petition. A claim of trade secrecy for chemical identity will be considered sufficient if, assuming all of the information presented in the substantiation is true, this supporting information could support a valid claim of trade secrecy. A claim is sufficient if it meets the criteria set forth in § 350.13.

(1) *Sufficient claim.* If the claim meets the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing, by certified mail (return receipt requested), that it has 30 days from the date of receipt of the notice to submit supplemental information in writing in accordance with § 350.7(e), to support the truth of the facts asserted in the substantiation. EPA will not accept any supplemental information, in response to this notification, submitted after the 30-day period has expired. The notification required by this section shall include the address to which supplemental information must be sent. The notification may specifically request supplemental information in particular areas relating to the submitter's claim. The notification must inform the submitter of his right to claim any trade secret or confidential business information as confidential, and shall include a reference to § 350.7(e) of this regulation as the source for the proper procedure for claiming trade secrecy for trade secret or confidential business information submitted in the supplemental information requested by EPA.

(2) *Insufficient claim.* If the claim does not meet the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing of this fact by certified mail (return receipt requested). Upon receipt of this notice, the submitter may either file an appeal of the matter to the Office of General Counsel under paragraph (a)(2)(i) of this section, or, for good cause shown, submit additional material in support of its claim of trade secrecy to EPA under paragraph (a)(2)(ii) of this section. The notification required by this section shall include the reasons for EPA's decision that the submitter's claim is insufficient, and shall inform the submitter of its rights within 30 days of receiving notification to file an appeal with EPA's Office of General Counsel or to amend its original substantiation for good cause shown. The notification shall include the address of the Office of General Counsel, and the address of the office to which an amendment for good cause shown should be sent. The notification shall also include a reference to §§ 350.11(a)(2) (i)–(iv) of this regulation as the source on the proper procedures for filing an appeal or for amending the original substantiation.

(i) *Appeal.* The submittal may file an appeal of a determination of insufficiency with the Office of General Counsel within 30 days of notification of insufficiency, in accordance with the procedures set forth in § 350.15.

(ii) *Good cause.* In lieu of an appeal, the submitter may send additional material in support of its trade secret claim, for good cause shown, within 30 days of receipt of the notification of insufficiency. To do so, the submitter shall notify EPA by letter of its contentions as to good cause, and shall include in that letter the additional supporting material. EPA shall notify the submitter by certified mail if the good cause standard has not been met and

the additional material will not be accepted. The submitter may then seek review in U.S. District Court.

(iii) Good cause is limited to the following:

(A) The submitter was not aware of the facts underlying the additional information at the time the substantiation was submitted, and could not reasonably have known the facts at that time; or

(B) Neither EPA regulations nor other EPA guidance called for such information at the time the substantiation was submitted.

(iv) If EPA determines that the submitter has met the standard for good cause, then EPA shall decide whether the submitter's claim meets the Agency's standards of sufficiency set forth in § 350.13.

(A) If after receipt of additional material for good cause, EPA decides the claim is sufficient, EPA will determine whether the claim presents a valid claim of trade secrecy according to the procedures set forth in paragraph (b) of this section.

(B) If after receipt of additional material for good cause, EPA decides the claim is still insufficient, EPA will notify the submitter by certified mail (return receipt requested) and the submitter may seek review in U.S. District Court within 30 days of notification. The notification required by this paragraph shall include EPA's reasons for its determination, and shall inform the submitter of its right to seek review in U.S. District Court within 30 days of receipt of notification.

(v) If EPA determines that the submitter has not met the standard for good cause, then EPA shall notify the submitter by certified mail (return receipt requested). The submitter may seek review of EPA's decision within 30 days of receipt of notification in U.S. District Court. The notification required in this paragraph shall include EPA's reasons for its determination, and shall inform the submitter of its right to seek review in U.S. District Court within 30 days of receipt of the notification.

(b) *Determination of trade secrecy.* Once a claim has been determined to be sufficient under paragraph (a) of this section, EPA must decide whether the claim is entitled to trade secrecy.

(1) If EPA determines that the information submitted in support of the trade secret claim is true and that the chemical identity is a trade secret, the petitioner shall be notified by certified mail (return receipt requested) of EPA's determination and may bring an action in U.S. District Court within 30 days of receipt of such notice. The notification required in this paragraph shall include the reasons why EPA has determined that the chemical identity is a trade secret and shall inform the petitioner of its right to seek review in U.S. District Court within 30 days of receipt of notification. The submitter shall be notified of EPA's decision by regular mail.

(2) If EPA decides that the information submitted in support of the trade secret claim is not true and that the chemical identity is not a trade secret:

(i) The submitter shall be notified by certified mail (return receipt requested) of EPA's determination and may appeal to the Office of General Counsel within 30 days of receipt of such notice, in accordance with the procedures set forth in § 350.17. The notification required by this paragraph shall include the reasons why EPA has determined that the chemical identity is not a trade secret and shall inform the submitter of its appeal rights to EPA's Office of General Counsel. The notification shall include the address to which an appeal should be sent and the procedure for filing an appeal, as set forth in § 350.17(a) of this regulation.

(ii) The General Counsel shall notify the submitter by certified mail (return receipt requested) of its decision on appeal pursuant to the requirements in § 350.17. If the General Counsel affirms the decision that the chemical identity is not a trade secret, then the submitter shall have 30 days from the date it receives notification of the General Counsel's decision to bring an action in U.S. District Court. If the General Counsel decides that the chemical identity is a trade secret, then EPA shall follow the procedure set forth in paragraph (b)(1) of this section.

**§ 350.13 Sufficiency of assertions.**

(a) A substantiation submitted under § 350.7 will be determined to be insufficient to support a claim of trade secrecy unless the answers to the questions in the substantiation submitted under § 350.7 assert specific facts to support all of the following conclusions:

(1) The submitter has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures. To support this conclusion, the facts asserted must show all of the following:

(i) The submitter has taken reasonable safeguards to prevent unauthorized disclosure of the specific chemical identity.

(ii) The submitter has not disclosed the specific chemical identity to any person who is not bound by an agreement to refrain from disclosing the information.

(iii) The submitter has not previously disclosed the specific chemical identity to a local, State, or Federal government entity without asserting a confidentiality claim.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person. To support this conclusion, the facts asserted must show all of the following:

(i) *Either:*

(A) Competitors do not know that the substance can be used in the fashion that the submitter uses it, and competitors cannot easily duplicate the specific use of this substance through their own research and development activities; or

(B) Competitors are not aware that the submitter is using the substance in this fashion.

(ii) The fact that the submitter manufactures, imports or otherwise uses the substance in a particular fashion is not contained in any publication or other information source available to competitors or the public.

(iii) The non-confidential version of the submission under this title does not contain sufficient information to enable competitors to determine the specific chemical identity withheld therefrom.

(iv) The information referred to in (a)(3)(i)(A) is of value to competitors.

(v) Competitors are likely to use this information to the economic detriment of the submitter and are not precluded from doing so by a United States patent.

(vi) The resulting harm to submitter's competitive position would be substantial.

(4) The chemical identity is not readily discoverable through reverse engineering. To support this conclusion, the facts asserted must show that competitors cannot reasonably learn the specific chemical identity by analysis of the submitter's products or environmental releases.

(b) The sufficiency of the trade secrecy claim shall be decided entirely upon the information submitted under § 350.7.

**§ 350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.**

(a) The public may request the disclosure of chemical identity claimed as trade secret by submitting a written petition requesting such disclosure to the address specified in § 350.16.

(b) The petition shall include:

(1) The name, address, and telephone number of the petitioner;

(2) The name, and address of the company claiming the chemical identity as trade secret; and

(3) A copy of the submission in which the submitter claimed chemical identity as trade secret, with a specific indication as to which chemical identity the petitioner seeks disclosed.

(c) EPA shall acknowledge to the petitioner the receipt of the petition by letter.

(d) Incomplete petitions. If the information contained in the petition is not sufficient to allow EPA to identify which chemical identity the petitioner is seeking to have released, EPA shall notify the petitioner that the petition cannot be further processed until additional information is furnished. EPA will make every reasonable effort to assist a petitioner in providing sufficient information for EPA to identify the chemical identity the petitioner is seeking to have released.

(e) EPA shall make a determination on a petition requesting disclosure, in accordance with section 350.11, and within nine months of receipts of such petition.

**§ 350.16 Address to send trade secret claims and petitions requesting disclosure.**

All claims of trade secrecy under sections 303(d)(2), (d)(3), 311, 312, and 313 and all public petitions requesting disclosure of chemical identities claimed as trade secret should be sent to the following address:

U.S. Environmental Protection Agency
P.O. Box 70266
Washington, DC 20024–0266

**§ 350.17 Appeals.**

(a) *Procedure for filing appeal.* A submitter may appeal an EPA determination under § 350.11(a)(2) or (b)(2)(i), by filing an appeal with the Office of General Counsel. The appeal shall be addressed to the Office of General Counsel, Environmental Protection Agency, Contracts and Information Law Branch, Room 3600M, LE–132G, 401 M Street, SW., Washington, DC 20460, and shall contain the following:

(1) A letter requesting review of the appealed decision; and

(2) A copy of the letter containing EPA's decision upon which appeal is requested.

(b) *Appeal from determination of insufficient claim.*

(1) Where a submitter appeals from a finding by EPA under § 350.11(a)(2) that the trade secrecy claim presents insufficient support for a finding of trade secrecy, the Office of General Counsel shall make one of the following determinations:

(i) The trade secrecy claim at issue meets the standards of sufficiency set forth in § 350.13; or

(ii) The trade secrecy claim at issue does not meet the standards of sufficiency set forth in § 350.13.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the claim shall be processed according to § 350.11(a)(1). The General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail. The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, and a statement of the decision on appeal.

(3) If the General Counsel upholds the decision made by the EPA office handling the claim, the submitter may seek review within 30 days in U.S. District Court. The General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail. The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal, and a statement of the submitter's right to seek review in U.S. District Court.

(c) *Finding of no trade secret.* (1) If a submitter appeals from a finding by EPA under § 350.11(b)(ii) that the specific chemical identity at issue is not a trade secret, the Office of General Counsel shall make one of the following determinations:

(i) The assertions supporting the claim of trade secrecy are true and the chemical identity is a trade secret; or

(ii) The assertions supporting the claim of trade secrecy are not true and the chemical identity is not a trade secret.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal. The Office of General Counsel shall send the petitioner the notification required in § 350.11(b)(1).

(3) If the General Counsel upholds the decision of the EPA office which made the trade secret determination, the submitter may seek review in U.S. District Court within 30 days. The General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail (return receipt requested). This notification shall be written, and shall be furnished by certified mail (return receipt requested). The notice shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, the basis for the appeal determination, that it constitutes final Agency action concerning the chemical identity trade secret claim, and that such final Agency action may be subject to review in U.S. District Court. With respect to the release of the trade secret chemical identity EPA shall include in this notification notice of intent to release chemical identity, as required by § 350.18.

**§ 350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.**

(a) Where EPA's Office of General Counsel makes a determination under § 350.17(c)(3), that chemical identity claimed as trade secret is not entitled to trade secret protection, EPA shall furnish the notice set forth in paragraph (c) of this section to the submitter claiming the chemical identity as trade secret.

(b) Where a submitter fails to seek review within Federal District Court within 20 days of receiving notification of an EPA determination under §§ 350.11(a)(iv)(B), or 350.11(a)(2)(v) of this regulation, EPA may furnish notice of intent to disclose the claimed trade secret chemical identity within 10 days by furnishing the submitter with the notice set forth in paragraph (c) of this section by certified mail (return receipt requested).

(c) EPA shall furnish notice of intent to release chemical identity claimed trade secret by sending the following notification to submitters, under the circumstances set forth in paragraphs (a) and (b) of this section. The notification shall state that EPA will make the chemical identity available to the public on the tenth working day after the date of the submitter's receipt of written notice (or on such later date as the Office of General Counsel may establish), unless the Office of General Counsel has first been notified of the submitter's commencement of an action

in Federal court to obtain judicial review of the determination at issue, and to obtain preliminary injunctive relief against disclosure. The notice shall further state that if such an action is timely commenced, EPA may nonetheless make the information available to the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or whenever it appears to Office of General Counsel, after reasonable notice to the business, that the business is not taking appropriate measures to obtain a speedy resolution of the action.

**§ 350.19 Provision of information to States.**

(a) Any State may request access to trade secrecy claims, substantiations, supplemental substantiations, and additional information submitted to EPA for good cause. EPA shall release this information, even if claimed confidential, to any State requesting access if:

(1) The request is in writing;

(2) The request is from the Governor of the State; and

(3) The State agrees to safeguard the information with procedures equivalent to those which EPA uses to safeguard the information.

(b) The Governor of a State which receives access to trade secret information under this section may disclose such information only to State employees.

**§ 350.21 Adverse health effects.**

The Governor or State emergency response commission shall identify the adverse health effects associated with each of the chemicals claimed as trade secret and shall make this information available to the public. The material safety data sheets submitted to the State emergency response commissions may be used for this purpose.

**§ 350.23 Disclosure to authorized representatives.**

(a) Under section 322(f) of the Act, EPA possesses the authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to trade secret or confidential treatment under this part. Such authority may be exercised only in accordance with paragraph (b) of this section.

(b) (1) A person under contract or subcontract to EPA or a grantee who performs work for EPA in connection with Title III or regulations which implement Title III may be considered an authorized representative of the United States for purposes of this § 350.23. Subject to the limitations in this § 350.23(b), information to which this section applies may be disclosed to such a person if the EPA program office managing the contract, subcontract, or grant first determines in writing that such disclosure is necessary in order that the contractor, subcontractor or grantee may carry out the work required by the contract, subcontract or grant.

(2) No information shall be disclosed under this § 350.23(b) unless this contract, subcontract, or grant in question provides:

(i) That the contractor, subcontractor or the grantee and the contractor's or subcontractor's employees shall use the information only for the purpose of carrying out the work required by the contract, subcontract, or grant, and shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required by the contractor, subcontractor or grantee for the performance of the work required under the contract, subcontract or grant, or upon completion of the contract, subcontract or grant;

(ii) That the contractor or subcontractor shall obtain a written agreement to honor such terms of the contract or subcontract from each of the contractor's or subcontractor's employees who will have access to the information, before such employee is allowed such access; or that the grantee who has access to the information will sign a written agreement to honor the terms of the grant; and

(iii) That the contractor, subcontractor or grantee acknowledges and agrees that the contract, subcontract or grant provisions concerning the use and disclosure of business information are included for the benefit of, and shall be enforceable by, both EPA and any covered facility having an interest in information concerning it supplied to the contractor, subcontractor or grantee by EPA under the contract or subcontract or grant.

(3) No information shall be disclosed under this § 350.23(b) until each covered facility has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than 5 working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor or grantee, the contract, subcontract or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the **Federal Register** or may be sent to individual facilities.

(4) The EPA program office shall prepare a record of disclosures under this 350.23(b). The EPA program office shall maintain the record of disclosure and the determination of necessity prepared under paragraph (b)(1) of this section for a period of not less than 36 months after the date of the disclosure.

**§ 350.25 Disclosure in special circumstances.**

Other disclosure of specific chemical identity may be made in accordance with 40 CFR 2.209.

**§ 350.27 Substantiation form to accompany claims of trade secrecy.**

(a) The form in paragraph (b) of this section must be completed and submitted as required in § 350.7(a).

(b) Substantiation form to accompany claims of trade secrecy.

BILLING CODE 6560-50-M

| EPA | **Substantiation to Accompany Claims of Trade Secrecy Under Title III** | Form Approved<br>OMB No. xxxx-xxxx<br>Approval Expires xx-xx-xx |
|---|---|---|

Instructions: Please answer the following questions in the space provided. Type all responses. If you need more space to answer a particular question, please use additional sheets. If you use additional sheets, be sure to include the number and (if applicable) subpart of the question being answered and to write your facility's Dun & Bradstreet Number on the lower right-hand corner of each sheet.

You must submit this form to EPA in sanitized and unsanitized versions, along with sanitized and unsanitized copies of the submittal that gives rise to this trade secret claim. The unsanitized version of this form contains specific chemical identity and CAS number and may contain other trade secret or confidential business information, which should be clearly labeled as such. Failure to claim other information trade secret or confidential will make that information publicly available. In the sanitized version of this form, the specific chemical identity and CAS number must be replaced with the chemical's generic class or category and any other trade secret or confidential business information deleted. You should also send sanitized copies of the submittal and this form to relevant State and local authorities. Failure to answer each question on this form will make your submittal publicly available.

Is this form sanitized or unsanitized? ☐ Sanitized ☐ Unsanitized

| Facility Identification | Title III Section (Check one only) |
|---|---|
| Name | ☐ 303 ☐ 311 ☐ 312 ☐ 313 |
| Street Address | CAS Number (Unsanitized Version Only)<br>☐☐☐☐☐–☐☐–☐ |
| City, State, and ZIP Code | Specific Chemical Identity (Unsanitized Version Only) |
| Dun & Bradstreet Number<br>☐☐–☐☐☐–☐☐☐☐ | Generic Class or Category |

(1) Describe the specific measures taken to safeguard the confidentiality of the chemical identity claimed as trade secret.

(2) Have you disclosed this chemical identity to any person not an employee of your company or of a local, State or Federal government entity, who has not signed a confidentiality agreement requiring them to refrain from disclosing the chemical identity to others?

☐ Yes ☐ No

| EPA | Substantiation to Accompany Claims of Trade Secrecy Under Title III | Form Approved<br>OMB No. xxxx-xxxx<br>Approval Expires xx-xx-xx |
|---|---|---|

(3) List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

| Government Entity | Confidentiality Claim Asserted | | Confidentiality Claim Denied | |
|---|---|---|---|---|
| | Yes | No | Yes | No |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(4) In order to show the validity of a trade secrecy claim, you must identify your specific use of the substance claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(a) Describe the specific use of the chemical substance, identifying the product or process in which it is used. (If you use the substance other than as a component of a product or in a manufacturing process, identify the activity where the substance is used.)

(b) Has your company or facility identity been linked to the specific chemical identity of the substance in publications or other information available to the public (of which you are aware)? ☐ Yes ☐ No

Is this linkage known to your competitors? ☐ Yes ☐ No or Not Applicable

If the answer to either question is yes, explain why this knowledge does not eliminate the justification for trade secrecy.

| EPA | Substantiation to Accompany Claims of Trade Secrecy Under Title III | Form Approved<br>OMB No. xxxx-xxxx<br>Approval Expires xx-xx-xx |
|---|---|---|

(c) If this use of the substance is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the form.

(d) Explain why your use of the substance would be valuable information to your competitors.

(5) Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, including an estimate of the potential loss of sales or profitability.

| EPA | Substantiation to Accompany Claims of Trade Secrecy Under Title III | Form Approved<br>OMB No. xxxx-xxxx<br>Approval Expires xx-xx-xx |
|---|---|---|

(6) To what extent is the substance available to the public or your competitors in products, articles, or environmental releases?

Describe the factors which influence the cost of determining the identity of the substance by chemical analysis of the product, article, or waste which contains the substance (e.g., whether the substance is in pure form or is mixed with other substances), and provide a rough estimate of that cost.

(7) Is your use of this substance subject to any U.S. patent? ☐ Yes ☐ No

If so, identify the patent and explain why (A) it does not connect you with the substance and (B) why it does not protect you from competitive harm.

Patent Number: _____

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential (if any) would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. I acknowledge that I may be asked by the Environmental Protection Agency to provide further detailed factual substantiation relating to this claim of trade secrecy, and certify that to the best of my knowledge and belief such information is available. I understand that if it is determined by the Administrator of E.P.A. that this trade secret claim is frivolous, I may be liable for a penalty of up to $25,000 per claim.

| Signature and Date | Name and Title | Telephone |
|---|---|---|
| | | |

EPA Form xxxx (xx-xx)

BILLING CODE 6560-50-C

## Subpart B—Disclosure of Trade Secret Information to Health Professionals

### § 350.40 Disclosure to health professionals.

(a) *Definitions.* "Medical emergency" means any unforeseen condition which a health professional would judge to require urgent and unscheduled medical attention. Such a condition is one which results in sudden and/or serious symptom(s) constituting a threat to a person's physical or psychological well-being and which requires immediate medical attention to prevent possible deterioration, disability, or death.

(b) The specific chemical identity, including the chemical name of a hazardous chemical, extremely hazardous substance, or a toxic chemical, is made available to health professionals, in accordance with the applicable provisions of this section.

(c) *Diagnosis or Treatment by Health Professionals.* In non-emergency situations, an owner or operator of a facility which is subject to the requirements of sections 311, 312, and 313, shall, upon request, provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to a health professional if:

(1) The request is in writing;

(2) The request describes why the health professional has a reasonable basis to suspect that:

(i) The specific chemical identity is needed for purposes of diagnosis or treatment of an individual,

(ii) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(iii) Knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

(3) The request contains a confidentiality agreement which includes:

(i) A description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(ii) A statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need authorized in paragraph (c)(2) of this section and will not release the information under any circumstances, except as authorized by the terms of the confidentiality agreement or by the owner or operator of the facility providing such information.

(4) The request includes a certification signed by the health professional stating that the information contained in the statement of need is true.

(5) Following receipt of a written request, the facility owner or operator to whom such request is made shall provide the requested information to the health professional promptly.

(d) *Preventive Measures and Treatment by Local Health Professionals.* An owner or operator of a facility subject to the requirements of sections 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, epidemiologist, or nurse) if:

(1) The requester is a local government employee or a person under contract with the local government;

(2) The request is in writing;

(3) The request describes with reasonable detail one or more of the following health needs for the information:

(i) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(ii) To conduct or assess sampling to determine exposure levels of various population groups.

(iii) To conduct periodic medical surveillance of exposed population groups.

(iv) To provide medical treatment to exposed individuals or population groups.

(v) To conduct studies to determine the health effects of exposure.

(vi) To conduct studies to aid in the identification of chemicals that may reasonably be anticipated to cause an observed health effect.

(4) The request contains a confidentiality agreement which includes:

(i) A description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(ii) A statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need authorized in paragraph (d)(3) of this section and will not release the information under any circumstances except as may otherwise be authorized by the terms of such agreement or by the person providing such information.

(5) The request includes a certification signed by the health professional stating that the information contained in the statement of need is true.

(6) Following receipt of a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the local health professional.

(e) *Medical Emergency.* (1) An owner or operator of a facility which is subject to the requirements of sections 311, 312, or 313 must provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if the treating physician or nurse determines that:

(i) A medical emergency exists as to the individual or individuals being diagnosed or treated;

(ii) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and,

(iii) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

(2) Owners or operators of facilities must provide the specific chemical identity to the requesting treating physician or nurse immediately following the request, without requiring a written statement of need or a confidentiality agreement in advance.

(3) The owner or operator may require a written statement of need and a written confidentiality agreement as soon as circumstances permit. The written statement of need shall describe in reasonable detail the factors set forth in paragraph (e)(1) of this section. The written confidentiality agreement shall be in accordance with paragraphs (c)(3) and (f) of this section.

(f) *Confidentiality agreement.* The confidentiality agreement authorized in paragraphs (c)(3), (d)(4) and (e)(3) of this section:

(1) May restrict the use of the information to the health purposes indicated in the written statement of need;

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and

(3) May not include requirements for the posting of a penalty bond.

(g) Nothing in this regulation is meant

to preclude the parties from pursuing any non-contractual remedies to the extent permitted by law, or from pursuing the enforcement remedy provided in section 325(e) of Title III.

(h) The health professional receiving the trade secret information may disclose it to EPA only under the following circumstance: the health professional must believe that such disclosure is necessary in order to learn from the Agency additional information about the chemical necessary to assist him in carrying out the responsibilities set forth in paragraphs (c), (d), and (e) of this section. Such information comprises facts regarding adverse health and environmental effects.

[FR Doc. 87-23843 Filed 10-9-87; 4:35 pm]
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federal register

Thursday
October 15, 1987

Part III

# Environmental Protection Agency

# Department of Health and Human Services

## Agency for Toxic Substances and Disease Registry

## Availability of Toxicological Profiles; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency For Toxic Substances and Disease Registry

## ENVIRONMENTAL PROTECTION AGENCY

**[ATSDR-2; FRL-3269-7]**

### Availability of Toxicological Profiles

**AGENCIES:** Department of Health and Human Services (DHHS): Agency for Toxic Substances and Disease Registry (ATSDR); and Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for the Agency for Toxic Substances and Disease Registry (ATSDR) of DHHS and EPA with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance previously included on the first priority list of 100 chemicals. The list identified the first 100 chemicals which both Agencies determined posed the most significant potential threat to human health. This list was published in the **Federal Register** on April 17th, 1987 (52 FR 12866) as required by SARA section 110.

This notice announces the expected availability dates of the first 25 draft toxicological profiles for review and comment.

### Availability

The following draft toxicological profiles are expected to be publicly available by the date indicated:

| Date/Profile | CAS number |
|---|---|
| **October 17, 1987** | |
| Benzo(a)anthracene | 56-55-3 |
| Benzo(a)pyrene | 50-32-8 |
| Beryllium | 7440-41-7 |
| Chloroform | 67-66-3 |
| Chromium | 7440-47-3 |
| Chrysene | 218-01-9 |
| Dibenzo(a,h)anthracene | 53-70-3 |
| Heptachlor/Heptachlor epoxide | 76-44-8/1024-57-3 |
| Nickel | 7440-02-0 |
| N-Nitrosodiphenylamine | 86-30-6 |
| **October 29, 1987** | |
| Aldrin/dieldrin | 309-00-2/60-57-1 |
| Arsenic | 7440-38-2 |
| Benzo(b)fluoranthene | 205-99-2 |
| PCBs—Aroclor 1260, 1254, 1248, 1242, 1232, 1221, 1016. | 11096-82-5, 11097-69-1, 12672-29-6, 53469-21-9, 11141-16-5, 11104-28-2, 12674-11-2 |
| 2,3,7,8-Tetrachlorodibenzo-p-dioxin. | 1746-01-6 |
| **November 5, 1987** | |
| Benzene | 71-43-2 |
| Bis(2-ethylhexyl)phthalate | 117-81-7 |
| Cadmium | 7440-43-9 |
| 1,4-Dichlorobenzene | 106-46-7 |
| Methylene chloride | 75-09-2 |
| **November 30, 1987** | |
| Cyanide | 57-12-5 |
| Lead | 7439-92-1 |
| Tetrachloroethylene | 127-18-4 |
| Trichloroethylene | 79-01-6 |
| Vinyl chloride | 75-01-4 |

A full 90-day public comment period will be provided for each profile, starting from the actual release date. The close of the comment period for each draft profile will be indicated on the front of each profile.

Requests for draft toxicological profiles should be sent to: Ms. Georgi Jones, Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Chamblee 28 South, 1600 Clifton Rd., Atlanta, GA 30333.

Specify the profiles you wish to review. One copy of each profile requested will be forwarded, free of charge, as they become available. In the case of undue delays, requestors will be notified.

Five copies of all comments should be sent to Ms. Jones at the above address by the end of the comment period. All written comments and the draft profiles will be available for public inspection at the Agency for Toxic Substances and Disease Registry (ATSDR), Building 28 South, Room 1103, 4770 Buford Highway, NE., Chamblee, GA, from 8 am to 4:30 pm, Monday through Friday, except legal holidays. Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-2.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund, 42 U.S.C. 9601 *et seq.*).

Section 110 of SARA amends section 104(i) of CERCLA by establishing requirements for the preparation of: (1) Lists of hazardous substances in order of priority, (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

In compliance with section 104(i)(2)(A) of CERCLA, ATSDR and EPA published on April 17, 1987 (52 FR 12866) the first priority list of 100 hazardous substances. This priority list of 100 was further broken down into four groups of 25 chemicals. The first group of 25 was to be the subject of the second phase of the requirements, i.e., the development of the first set of toxicological profiles. Section 104(i)(3) of CERCLA spells out the content of these profiles and the timetable by which they must be developed. Profiles on at least substances on the first priority list were to be completed within one year of the enactment of SARA (by October 17, 1987). The remaining seventy-five are to be completed at a rate of at least twenty-five per year with the total 100 completed within four years after the enactment of the SARA amendments. Revision and republication is mandated as necessary but no less often than once every three years.

Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. The Agencies' intention is that this information be used to identify the key toxicological testing needs that when filled will improve our ability to define significant human exposure levels.

The toxicological profiles are to be provided to the States and made available to the public. The profiles are to be prepared in accordance with the guidelines developed by ATSDR and EPA. These guidelines were published along with the priority list of 100 in the April 17, 1987 **Federal Register** Notice (52 FR 12870).

This current notice announces the projected availability dates of the first 25 draft toxicological profiles. The documents have undergone extensive internal review and have been subject to scientific and technical peer review by outside experts. We are now announcing their availability and encouraging public participation and comment on the further development of these profiles. Although the profiles will not be completed by the October 17, 1987 deadline, we believe that the extra time given to peer review and public

review and comment is important to the development of quality profiles of scientific merit.

Although we are reasonably confident that the key studies for each of the 25 substances were considered during the profile development process, this **Federal Register** notice solicits any significant studies, including unpublished data, which may aid in the revision of these draft profiles.

## II. Levels of Significant Human Exposure

The setting of specific levels of significant human exposure has presented a unique set of problems. The significance of a specific level of a hazardous substance depends on the context in which that level is evaluated. For example, a low level that may be insignificant with respect to causing acute, immediately debilitating symptoms may be highly significant with respect to causing gradual, chronic effects over a longer term. Since these profiles are intended for use by a diverse group of people who have different sutiations in which to interpret the significance of specific levels, it was considered appropriate at this time to describe the range of exposures over which effects may occur (where date are available), and to allow the user to make determinations as to which type of effect is significant in any particular instance. A format for graphically displaying the levels of significant human exposure has been developed and is used in the profiles to present the ranges over which effects may be observed.

We encourage public comment and recommendations on this specific issue.

## III. Solicitation of Public Comment

We are soliciting public comment on all phases of the development of the toxicological profiles. A previous **Federal Register** notice, published on April 17, 1987 (52 FR 12866) solicited comment on the first priority list of hazardous substance. We are currently reviewing those comments and are evaluating the impact that those comments may have on the priority list and the methods used in its development.

As the first 25 toxicological profiles become available in draft form, we are eager to provide them to the States, industry, public health professionals, scientists and the general public. We welcome comment and feedback on the content of the profiles; the format and scope of the documents; the process used in the development of the levels of significant human exposure and the overall process used in the development of the profiles.

These are specific items that we would like to draw to the attention of the reader and would strongly encourage as candidates for close attention during the comment period.

### *A. Public Health Statement*

The draft profiles include a public health statement which is intended to provide the lay public with a concise statement of the general health risks associated with the chemical of concern. The summary as originally planned should be able to stand alone. If removed from the rest of the document, it should still be capable of conveying to the public the substantive health concerns associated with the substance. We are also considering the development of more abbreviated versions of the public health statements and are evaluating a number of different formats. This notice specifically invites comments on the existing public health effects statements in the draft profiles and solicits recommendations for alternative approaches.

### *B. Data/Studies Used in the Development of the Profiles*

In general, and for each chemical-specific profile, have the appropriate studies been used in the development of these documents? Our concern here is that we capture the critical, or "key", studies but not miss other data that may be important in the valid evaluation of the toxicological profile chemicals.

### *C. Format and Content of the Profiles*

The draft profiles represent our best effort to provide the information required by section 104(i)(3) of CERCLA in the most useful format for the various identified users of the profiles, given the constraints of the tight timeframe. Every effort has been made to define sections clearly and to format the documents in such a way that they can be used as resource documents by many different audiences. We specifically request comment on the format and content of the initial set of profiles, including how the format might be modified for subsequent sets of profiles.

### *D. Levels of Significant Human Exposure*

What is the most useful way of presenting this type of information? For this first generation of profiles we have selected a graphic presentation that reflects a "range" of values that covers both upper and lower bounds of effect levels. Is this more useful than a single number? Are there other ways of presenting this type of information that would be more useful to the eventual user?

### *E. Identification of Significant Data Gaps*

The process used to develop the draft profiles has resulted in the identification of the full range of health effects data gaps associated with each chemical. However, depending on individual circumstances some subset of the identified data gaps may be essential in determining levels of significant exposure, while other data gaps may be less immediate. ATSDR, EPA, and the National Toxicology Program (NTP) have been exploring ways to identify the critical data elements that are needed to establish significant human exposure levels. This notice specifically requests comment and suggestions for approaching this phase of the toxicological profile process.

For The Agency For Toxic Substances and Disease Registry.

Dated: September 30, 1987.

**James O. Mason,**

*Administrator, Agency for Toxic Substances and Disease Registry.*

For The Environmental Protection Agency.

Dated: October 7, 1987.

**Lee M. Thomas,**

*Administrator, Environmental Protection Agency.*

[FR Doc. 87-23920 Filed 10-14-87; 8:45 am]

BILLING CODE 4160-70-M

Federal Register

Thursday
October 15, 1987

Part IV

# Environmental Protection Agency

40 CFR Part 370

Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 370**

**[FRL 3251-9]**

# Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Section 312 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law on October 17, 1986, required the Administrator to publish a uniform format for emergency and hazardous chemical inventory forms within three months. Under sections 311 and 312 of SARA, facilities required to prepare or have available a material safety data sheet (MSDS) under the Occupational Safety and Health Act (OSHA) and its implementing regulations must submit the MSDS and the inventory forms to local and State officials. These reporting provisions give public access to information on hazardous chemicals present in the local community for a wide variety of uses including emergency response and environmental and public health planning priorities. Today, EPA publishes a revision of the form for inventory reporting based on public comment received on the January 27, 1987, proposal and the July 14, 1987, notice reopening the comment period on several issues. EPA is also publishing the final rules for reporting under sections 311 and 312.

**EFFECTIVE DATES:** This rule becomes effective on October 15, 1987. Other dates relevant to this rule include the following:

1. Initial submission of material safety data sheets or alternative list: October 17, 1987 (or 90 days after the owner or operator of a facility is required to prepare or have available an MSDS for a hazardous chemical under OSHA regulations, whichever is later: For facilities newly subject to OSHA MSDS requirements in May 1988, MSDS or alternative lists will be due in August 1988).

2. Initial submission of the inventory form containing Tier I information: March 1, 1988 (or March 1 of the first year after a facility is required to prepare or have available an MSDS for that hazardous chemical under OSHA regulations, whichever is later: For facilities newly subject to OSHA MSDS requirements in May 1988, Tier I information must be submitted annually beginning March 1, 1989).

**ADDRESS:** The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Brody, Program Analyst, Preparedness Staff, Office of Solid Waste and Emergency Response, WH-562A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Chemical Emergency Preparedeness Program Hotline at 1-(800) 535-0202, or in Washington, DC at (202) 479-2449.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline.

I. Introduction
- A. Statutory Authority
- B. Background
  - 1. Superfund Amendments and Reauthorization Act of 1986 (SARA)
  - 2. Title III
  - 3. Subtitle B

II. Summary of the Public Comments on the Proposed Rule

III. Summary of Revisions to the Proposed Rule

IV. Response to Major Public Comments
- A. Definitions
- B. Reporting Thresholds
- C. Submission of Material Safety Data Sheets
- D. Hazard Categories
- E. Mixtures
- F. Public Access to Information
- G. Trade Secrets and Confidentiality
- H. Design and Content of Forms
- I. Integration of Title III Federal Requirements with State and Local Programs
- J. Information Management
- K. Regulatory Impact Analysis
- L. Miscellaneous

V. Relationship to Other EPA Programs
- A. Other Title III Programs
  - 1. Subtitle A — Emergency Planning
  - 2. Subtitle B — Section 313 Emissions Inventory
  - 3. Trade Secrets
- B. CERCLA Reporting Requirements

VI. Effective Date

VII. Regulatory Analyses
- A. Regulatory Impact Analysis
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

VIII. Submission of Reports

## I. Introduction

### *A. Statutory Authority*

These regulations are issued under Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), ("SARA" or "the Act"). Title III of SARA is known as the Emergency Planning and Community Right-to-Know Act of 1986.

### *B. Background*

#### 1. Superfund Amendments and Reauthorization Act of 1986 (SARA)

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA), which revises and extends the authorities established under the Comprehensive Environmental Response, Compensation and Libility Act of 1980 (CERCLA). Commonly known as "Superfund," CERCLA provides authority for federal clean-up of sites where hazardous materials have been deposited or released and for response to releases of hazardous substances or other contaminants. Title III of SARA establishes new authorities for emergency planning and preparedness, community right-to-know reporting, and toxic chemical release reporting.

#### 2. Title III

Title III of SARA, also known as the Emergency Planning and Community Right-to-Know Act of 1986, is intended to encourage and support emergency planning efforts at the State and local levels and to provide citizens and local governments with information concerning potential chemical hazards present in their communities.

Title III is organized into three subtitles. Subtitle A establishes the framework for State and local emergency planning. Final rules for facilities subject to Subtitle A requirements were published on April 22, 1987. 52 FR 13378. Subtitle B provides the mechanism for community awareness concerning hazardous chemicals present in the locality. This information is critical for effective local contingency planning. Subtitle B includes requirements for the submission of material safety data sheets and emergency and hazardous chemical inventory forms to State and local governments as well as the submission of toxic chemical release forms to the States and EPA. Subtitle C contains general provisions concerning trade secret protection, enforcement, citizen suits, and public availability of information.

'3. Subtitle B

Subtitle B of Title III is primarily concerned with providing information to appropriate local, State, and federal officials on the type, amount, location, use, disposal, and release of chemicals at certain facilities.

Subtitle B contains three reporting provisions. Section 311 requires the owner or operator of facilities subject to the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act (15 U.S.C. 651 *et seq.* as amended, 52 FR 31852 (August 24, 1987)) to submit material safety data sheets (MSDS), or a list of the chemicals for which the facility is required to have an MSDS, to the local emergency planning committees, State emergency response commissions, and local fire departments. The facilities are required to submit the MSDS or alternative list by October 17, 1987, or three months after the facility is required to prepare or have an MSDS for a hazardous chemical under OSHA regulations, whichever is later. Information collection requirements are approved by Office of Management and Budget under control number 2050–0072.)

Under section 312, owners and operators of facilities that must submit an MSDS under section 311 are also required to submit additional information on the hazardous chemicals present at the facility. Beginning March 1, 1988, and annually thereafter, the owner or operator of such a facility must submit an inventory form containing an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the location of these chemicals at the facility. Section 312(a) requires owners or operators of such facilities to submit the inventory form to the appropriate local emergency planning committee, State emergency response commission, and local fire department on or before March 1, 1988 (or March 1 of the first year after the facility first becomes subject to the OSHA MSDS requirements for a hazardous chemical) and annually thereafter on March 1.

Section 312 specifies that there be two reporting "tiers" containing information on hazardous chemicals at the facility in different levels of detail. "Tier I," containing general information on the amount and location of hazardous chemicals by category, is submitted annually. "Tier II," containing more detailed information on individual chemicals, is submitted upon request.

A proposed rule setting forth sections 311 and 312 reporting requirements and forms for inventory reporting under section 312 was published on January 27, 1987, 52 FR 2836. Additionally, on July 14, 1987, EPA announced reopening of the comment period on three issues raised during the initial rulemaking and held a public meeting on those issues. 52 FR 26357 (July 14, 1987). Today's rule finalizes the reporting requirements and the inventory forms, which have been revised based on public comment.

Section 313 requires that certain facilities with ten or more employees that manufacture, process, or use a "toxic chemical" in excess of a statutorily-prescribed quantity submit annual information on the chemical and releases of the chemical into the environment. This information must be submitted to EPA and to the appropriate State offices annually beginning on July 1, 1988. EPA is required under section 313(i) to establish a national toxic chemical inventory database for the management of these data. A proposed rule setting forth section 313 reporting requirements and a form for submission of such reports was published on June 4, 1987, 52 FR 21152.

The public has access to most Title III information at locations designated by the Administrator, the State emergency response commission, or local emergency planning committee, as appropriate.

## II. Summary of the Public Comments on the Proposed Rule

A total of 241 letters was received on the proposed rule setting forth sections 311 and 312 requirements and an additional 94 letters following the notice of the reopening of the comment period on July 14, 1987. There were a number of comments requesting clarification of terms and exemptions provided in the rule. Specific comments focused on the definition of "facility" and the need for clarification of the exemptions that are applicable to the definition of "hazardous chemical," particularly the exemptions related to research laboratories, household products, and solids.

There were numerous comments on the proposed reporting threshold; these focused on the appropriate length of phase-in, appropriate reporting threshold quantities in each year, and the threshold for the extremely hazardous substance list. Many related comments identified the need for funds to implement these reporting requirements.

Another issue commonly addressed by commenters was the need to reduce the number of physical and health hazard categories by which the MSDS list and Tier I and Tier II submissions are compiled. There were also comments on the design and content of the reporting forms.

Other major issues were the need for integration of the federal reporting requirements into existing State and local programs and flexibility for effective implementation by State and local governments.

Other comments addressed information management, the economic analysis and small business analysis, confidentiality of information, and enforcement and penalties.

## III. Summary of Revisions to the Proposed Rule

This section describes the significant changes that EPA has made to sections 311 and 312 reporting regulations based upon the public comments on the proposed rule. The following summary, which is organized according to the sections of the rule, describes each of the changes.

### *Section 370.2 Definitions*

Under section 311, an alternative to submitting the actual MSDS for each "hazardous chemical" at a facility is the submission of a list of such chemicals, grouped in "categories of health and physical hazards" as set forth under OSHA or its implementing regulations. Section 312 specifies that these categories should also be used in Tier I inventory reporting. EPA is authorized under these sections to alter these hazard categories.

The proposed rule required use of the OSHA hazard classification but solicited comment on several other options for establishing hazard categories. Based on the numerous comments requesting modifications of the categories in the proposed rule, EPA has consolidated the 23 OSHA hazard categories into five categories, as discussed in more detail in Section IV.D. of this preamble.

A definition for "hazard category" has been added to indicate the hazard classification to be used for Tier I and Tier II reporting and when the alternative list of chemicals rather than MSDS is submitted under § 370.21 of the rule.

Definitions of "extremely hazardous substance" and "threshold planning quantity" (TPQ) have also been added because of the reference to these terms in the minimum threshold regulation. Additionally, "present in the same form and concentration as a product packaged for distribution and use by the general public" is defined to help clarify

the "household product" exemption. EPA also eliminated the reference to 40 CFR Part 300 for additional definition of terms, since all necessary terms are now defined in Parts 350 and 370. Finally, EPA eliminated the definition on "Act" because that term does not appear elsewhere in the regulations.

*Section 370.20 Applicability*

Several changes were made to this section based on public comment. First, EPA has revised the threshold levels for reporting, as discussed in more detail in Section IV.B. of this preamble. EPA has revised the rule to raise the threshold in the second year and to establish a threshold of 500 pounds or the TPQ, whichever is less, for extremely hazardous substances. (For list of extremely hazardous substances, see 52 FR 13378 (April 22, 1987), to be codified at 49 CFR Part 355.) Section 370.20 of the final rule has been revised to reflect these changes.

Several commenters requested clarification on whether the threshold applies to the calendar year or to the year preceding October 17. The final rule was modified to delete reference to year in order to make clear that MSDS reporting on October 17, 1987, is to be made for chemicals present at or above the threshold on that date. With regard to inventory reporting, § 370.25 has been modified to make clear that reporting is for the preceding calendar year as specified under Section 312. In addition, the rule has been clarified by setting out the threshold as they apply to MSDS reporting, inventory reporting, and facilities that become subject to these requirements after October 17, 1987.

*Section 370.21 MSDS Reporting*

In response to a request for clarification regarding reporting of mixtures under the MSDS list reporting, § 370.21(b)(iii) has been modified to indicate that the hazardous components of mixtures do not need to be reported on the list if the mixture itself is reported.

The title of subsection (c) of § 370.21 has been changed from "update reporting" to "supplemental reporting" to reflect more accurately the content. This paragraph has also been modified to require that revised MSDS be submitted not only to the committee as indicated in the proposed rule, but also to the commission and the fire department. This change was made to ensure accuracy of the files held by these entities.

Section 370.21(d) has been revised to clarify that facilities must respond to all requests for MSDS, including requests for MSDS below the threshold and MSDS for listed chemicals.

Section 370.25(c) of the final rule indicates that the Tier II form must be submitted to the commission, the committee, and the fire department upon the request of such entities. In the proposed rule, the commission was omitted erroneously.

*Section 370.28 Mixtures*

Section (a) has been modified to indicate that reporting of mixtures under §§ 370.21 and 370.25 should be consistent "where practicable." This was done because one commenter pointed out that consistency in reporting may not always be possible; e.g., the percentage of the hazardous components may not be known.

A new section (b) was added to describe the calculation of the quantity of mixtures. If the reporting is on each component that is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) must be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical therein. If the reporting is on the mixture itself, the total quantity of the mixture must be reported.

*Sections 370.40 and 370.41 Inventory Forms*

As discussed in Section IV.I. of this preamble, several commenters sought clarification on the extent to which State or local forms similar in purpose and content could be used in lieu of the form published under section 312. Because facilities will need some certainty in meeting their reporting obligations, EPA is clarifying the rule to indicate that the forms published today are to be considered uniform formats for reporting. However, State or local governments may add supplemental questions. New §§ 370.40(a) and 370.41(a) address this issue in the final rule. This section has also been revised to correct an error in the proposed rulemaking that indicated that the Tier II form must be submitted to EPA. Section 370.41 in today's rule correctly indicates that the Tier II form must be submitted to the SERC, LEPC, and fire department as required in § 370.25(c).

In response to several comments concerning the average daily amount, EPA has changed the method of calculating this figure. The commenters' primary concern was the EPA's proposed method of calculation would create misleadingly low figures for chemicals that are present on-site for only short periods of time. On the final form, average daily amount is to be calculated by dividing the total of all daily weights by the number of days and chemical was present on the site. To reflect the amount more accurately, however, EPA will require facilities to report the number of days used in the calculation.

Although several commenters requested that EPA eliminate the requirement for a 24-hour emergency contact, the Agency has retained this requirement with minor changes, as discussed in Section IV.H. of this preamble. The final forms for both Tier I and Tier II have space for two emergency contacts and contain amended instructions that allow the naming of an office, instead of an individual, as a contact.

After considering numerous comments about the certification statement, EPA has deleted the word "immediately" from the proposed Tier I and Tier II certification statements. In its present form, the statement indicates that the person signing has read all the information in the inventory and has been responsible in a supervisory capacity—directly or indirectly—for the gathering of the information.

EPA made several other minor changes in both the Tier I and Tier II forms. The revised forms include the correct 6–2–1 block format for CAS numbers and a 4-block format for SIC codes. The revised instructions include an explanation of where a facility can find its Dun & Bradstreet number, a clarification of the reporting of CAS numbers of mixtures, a statement of the thresholds promulgated by the regulations, and a clarification that those thresholds apply to the calendar year preceding the reporting deadline. Additionally, the instructions for the forms have been modified to differentiate between Title III and OSHA exemption, including the supplementary OSHA exemptions that apply under the newly revised hazard communication standard.

In response to numerous comments regarding the location identification system on the Tier II form, the Agency has clarified that the building and lot be indicated, at a minimum, and has added the option of providing a brief narrative statement of location to the site plan and site co-ordinates options. EPA has removed the 3-space site co-ordinate abbreviation and added a blank line to provide more space for this narrative description. Minor changes made to the Tier II form also include more space for the chemical name. In addition, code 6 of the temperature and pressure codes ("less than ambient temperature") was revised slightly to avoid overlap

between code 6 and code 7 ("cryogenic conditions").

## IV. Reponses to Major Public Comments

A document summarizing the comments and providing EPA's responses to all the public comments is available in the public docket to this final rule. The major issues raised by the commenters and the Agency's response to them are described below.

### *A. Definitions*

1. "Facility"

Several commenters requested a clarification of the general definition of "facility" for purposes of Title III. Commenters requested that the term be limited to manufacturing, distribution, and storage facilities, or to operations required to prepare or have available an MSDS rather than the whole site. Other commenters asked the Agency to clarify whether the term excludes motor vehicles, rolling stock, and aircraft. Additional comments questioned whether the term "facility" includes non-adjacent warehouses and contractors who bring hazardous materials onto a plant site.

In both the proposed and final rules, EPA has codified the definition of "facility" provided in section 329 of SARA. Section 370.2 provides that, for the purposes of these regulations, "facility" means all buildings and other stationary items located on contiguous property under common ownership or control. Certain non-stationary items (motor vehicles, rolling stock, and aircraft) are also considered facilities, but only for the purposes of emergency release notification under section 304 of the Act (codified at 40 CFR 355.40). Thus, transportation vehicles are not "facilities" for purposes of this rule. ("Transportation-related facilities" under Title III are further defined in 40 CFR 355.20.)

In response to comments requesting EPA to limit "facility" to manufacturing, distribution, and storage, under Section 329, the term "facility" is not limited to manufacturing, distribution, and storage facilities, or operations required to prepare or have available an MSDS. However, sections 311 and 312 requirements are applicable only to facilities required to comply with the OSHA hazard communication standard, which is currently limited to facilities in SIC codes 20–39. OSHA has recently expanded the application of the hazard communication standard to facilities in the non-manufacturing sector, to be effective over the next nine months. 52 FR 51852 (August 24, 1987). With respect to the non-adjacent warehouses, any offsite storage would be considered a separate facility because the definition of "facility" includes only adjacent or contiguous property.

With respect to contractors bringing hazardous material on-site, the hazardous material brought to a facility is subject to sections 311 and 312 requirements if the facility is required to prepare or have available an MSDS for the material. Off-site contractors, if subject to OSHA MSDS requirements, will be required to submit MSDS and inventory forms for the material.

2. "Hazardous Chemical" Issues

Several commenters believed that federal agencies should develop a common definition of "hazardous substance" and "hazardous chemical."

Title III uses several different terms to describe related groups of substances. "Hazardous substances" are substances subject to CERCLA provisions and are defined in section 101(14) of that Act. "Extremely hazardous substances" are substances subject to the emergency planning provisions of Title III and are defined in section 302 of SARA. "Hazardous chemical" comprises the group of substances subject to sections 311 and 312 and is defined as all "hazardous chemicals" as defined under OSHA and its implementing regulations, but with five additional exclusions under section 311(e) of Title III. Because all of these groups of substances are specifically defined by statute, EPA is not able to revise the definitions to eliminate all differences among them. However, EPA is attempting to clarify the requirements pertaining to these different types of substances both through the Title III rulemakings and in future rulemakings concerning CERCLA hazardous substances so that any confusion generated by the different definitions is minimized.

EPA received numerous requests for clarification of the OSHA definition of "hazardous chemical."

Under OSHA's hazard communication standard, "hazardous chemical" is defined as any element, chemical compound, or mixture of elements and compounds that is a physical or health hazard. 29 CFR 1910.1200(c). OSHA does not specifically list all of the substances that may be "hazardous chemicals" but provides definitions of hazards, criteria for evaluating hazard information, and sources of information to determine the physical and health hazards of each chemical. Section 311(e) provides five exclusions from this definition. These exclusions are listed under the definition of "hazardous chemical" under § 370.2 of this regulation.

OSHA regulations also exempt other substances and products from the MSDS requirements, including Resource Conservation and Recovery Act (RCRA) hazardous wastes, tobacco products, wood, and manufactured articles. Because these are not exclusions from the definition of "hazardous chemical" but rather from the applicability of the MSDS requirements, these exclusions are not listed under § 370.2 of the final rule, as requested by a commenter, but are provided in the instructions on the Tier I and Tier II forms.

3. "Research Laboratory"

The Agency received numerous comments requesting clarification of the exemption under section 311(e) for chemicals used in research or medical facilities.

Section 311(e)(4) of SARA and § 370.2 of the regulations exclude from the definition of "hazardous chemical" any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual. EPA believes that this exclusion is designed to exempt facilities where small amounts of many types of chemicals are used, or stored for short periods, that are not hazardous to the general public when administered or used under appropriate supervision.

In addition, it is important to recognize that the exemption applies to the substance used, rather than to the entire facility. Thus, research and medical facilities are not exempted from reporting requirements under sections 311 and 312; rather, they will not need to provide information on many of their chemicals.

With respect to research laboratories, EPA interprets the exclusion to apply to research facilities as well as quality control laboratory operations located within manufacturing facilities. However, laboratories that produce chemical specialty products or full-scale pilot plant operations are considered to be part of manufacturing rather than research operations and would not be a "research laboratory." EPA has adopted this interpretation of "research laboratories" because it is consistent with the interpretation of "laboratory operations" used by OSHA in enforcing its limited requirements under the hazard communication standard for such facilities. In addition, the Agency believes this definition is consistent with the purpose of this exemption because it confines the exclusion to operations where small quantities of hazardous substances are used for short periods of time under the supervision of highly trained individuals.

With respect to medical facilities, commenters requested that EPA exempt veterinary and dental operations and portions of facilities dedicated to medical or first-aid purposes. In contrast, one commenter requested that EPA eliminate the exclusion for medical facilities.

EPA does not believe that it has the authority to expand the definition of "hazardous chemical" beyond that provided by Congress in section 311(e) and therefore cannot eliminate the exclusion for substances used in medical facilities. However, as noted earlier, the exclusion is not for medical facilities but is limited to substances used in the facility for medical purposes. In addition, such substances must be used under the direct supervision of a technically qualified individual. A medical facility might also use or store hazardous chemicals that are not used for medical purposes under the supervision of a "technically qualified individual." Such chemicals would be subject to sections 311 and 312 requirements unless excluded under another exemption under section 311 or OSHA.

With respect to the scope of the definition of "medical facility," EPA believes that the term includes veterinary and dental operations and any portion of a facility devoted to medical treatment, including first-aid.

4. "Household Products"

Several commenters requested clarification of the household product exemption. One commenter specifically requested clarification about petroleum products.

Section 311(e) exempts from the definition of "hazardous chemical" any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. EPA interprets this exclusion to apply to household or consumer products, either in use by the general public or in commercial or industrial use when in the same form and concentration as the product intended for use by the public. Because the public is generally familiar with such substances, their hazards, and their likely locations, the disclosure of such substances is unnecessary for right-to-know purposes.

This exemption is for general household and domestic products, and thus the clearest example of its application is ordinary household products stored in a home or located on a retailer's shelf. However, EPA believes that this exemption also applies to such products prior to distribution to the consumer when in the same form and concentration, and to such products when not intended for use by the general public. Thus, the exemption also applies to any substance packaged in the same form and concentration as a consumer product whether or not it is used for the same purpose as the consumer product. In addition, the exemption applies to such products when purchased in larger quantities by industrial facilities if packaged in substantially the same form as the consumer product and present in the same concentration. The exemption will not apply to substances present in different concentrations from the consumer products even if the substance is only used in small quantities.

In the July 14, 1987, notice, EPA requested comment on the scope of the exemption from the definition of "hazardous chemical" under section 311(e) for consumer or household products. EPA specifically requested comment on whether the term "form" in the phrase "present in the same form and concentration as a product packaged for distribution and use by the general public" should refer to the packaging of the product or only the physical state.

Most commenters on the notice supported EPA's interpretation that this exemption would apply to a substance in the same concentration as the analogous consumer product whether or not it is used for the same purpose or intended for use or distribution to the general public. Thus, a product labelled "for industrial use only" would qualify for this exemption if it was in the same form and concentration as the analogous product used by the general public.

However, several commenters disagreed with EPA's proposed interpretation that the term "form" refer to the packaging, rather than the physical state, of the substance. One commenter argued that the packaging of a product does not usually affect its hazardous properties. EPA disagrees; the packaging of the product not only may affect the hazard presented by a particular substance but also will affect the degree to which the public will be generally familiar with the substance, its hazards, and its likely locations. For instance, if "form" refers only to physical state, then the amount of the product present in a container is irrelevant. Thus, a substance may be packaged in small containers when distributed as a household product but transported or stored in bulk quantities when used for other purposes. Even though in the same concentration as the household product, a substance may pose much greater hazards when present in significantly larger quantities. In addition, while the general public may be familiar with the hazards posed by small packages of hazardous materials, they may not be as aware of the hazards posed by or likely locations of the same substances when transported or stored in bulk. As a result, EPA has retained the proposed interpretation of the consumer product exemption as more consistent with the community right-to-know purpose of section 311 and the section 311(e) exemptions. EPA has also added a definition of this exemption to the regulation.

One commenter stated that the reference to this exemption as the "household product exemption" implies that products used for personal or family purposes but that would not normally be considered "household products" are not exempted. However, section 311(e) explicitly refers to substances used for "personal, family, or household purposes," and EPA did not intend to imply any limitation on this exemption that would exclude only substances used for household purposes.

Concerning the effect of the exemption, EPA agrees with commenters who suggested that the exemption for consumer products applies even if the owner or operator of the facility must prepare or have available an MSDS for the substance. The requirements for MSDS submission, both in the statute and under the regulation, apply only to a facility that is required to prepare or have available an MSDS for a hazardous chemical. Because Title III contains exemptions from the definition of hazardous chemical that do not occur under the OSHA hazard communication standard, not all MSDS are subject to the MSDS reporting requirement under Title III. This is true of all exemptions under section 311(e), not just the household product exemption.

With respect to petroleum products, a petroleum product is excluded from the definition of hazardous chemical only when used for personal, family, or household purposes, such as gasoline in a family motor vehicle, or when the petroleum product is packaged in the same manner as a product available to the general public, such as a can of motor oil. Certain petroleum products or petroleum-derived materials may also be excluded under section 311(e)(5) when they are used as part of routine agricultural operations or are fertilizers held for sale by retailers.

5. Other Exemptions

A number of comments dealt with exemptions of specific substances or facility types.

With respect to questions concerning the exemption of radioactive sources, non-isolated intermediates, and scrap steel or steel and metal components, MSDS for these substances are required under Title III only if MSDS are necessary for them under OSHA and they meet the definition of "hazardous chemical" under section 311(e). For example, OSHA requires MSDS for non-isolated intermediates, and EPA does not see the need to exempt these substances from reporting.

OSHA has not included radioactivity as a hazard to be covered under the HCS. Such hazards would generally be covered under rules of the Nuclear Regulatory Commission or OSHA's radiation rule. Thus, radioactive substances are not subject to reporting under sections 311 and 312.

Steel and other similar non-reactive solids are generally exempt from MSDS requirement under OSHA (and thus from sections 311 and 312) when they are articles shaped during manufacture whose end use depends upon that shape. (See 29 CFR 1910.1200(b).) Even if subject to the OSHA MSDS requirements, steel and other manufactured solids are excluded from sections 311 and 312 reporting under section 311(e)(2).

Other comments concerning exemptions touched on the applicability of these requirements to newspaper producers, general merchandise retailers, and suppliers, dealers, or wholesalers who are not involved in the manufacture, repackaging, or use of hazardous chemicals.

Contrary to the commenters' suggestions that reporting by such facilities would be unnecessary, the Agency does not believe that exemptions for these facilities would be justified at this time. The basis of community right-to-know is not simply the risk that the specific facility may pose to a community by virtue of its manufacture, processing, or direct use of a chemical, but rather, the availability of information to the surrounding community concerning the amounts and location of certain substances that are present at a facility. Thus, if newspaper producers or merchandise suppliers, retailers, or dealers use, handle, or store "hazardous chemicals" for which an MSDS is required under OSHA, the public should have access to that information.

One commenter sought clarification of whether "storage" includes materials in pipelines and similar transportation systems.

Pipelines are part of the transportation exclusion under section 327, which excludes transportation-related facilities from all requirements under Title III except Section 304 release notification. Thus, materials on pipelines are not subject to the Section 311 and 312 reporting requirements.

Several commenters offered recommendations on exemptions in the agricultural area. Section 311(e)(5) is a 2-part exemption that excludes retailers of fertilizer from reporting requirements for the fertilizer and also excludes any substance when used in routine agricultural operations. EPA believes that this exemption is designed to eliminate reporting of fertilizers, pesticides, and other chemical substances when applied, administered, or otherwise used as part of routine agricultural activities. Fertilizers handled by retailers, even though not directly utilized by such persons for agricultural purposes, are also excluded. Because the general public is familiar with the application of agricultural chemicals as part of common farm, nursery, or livestock production activities, and the retail sale of fertilizers, there is no community need for reporting of the presence of these chemicals.

EPA agrees with the commenter who requested that the agricultural exemption be applied to horticultural growers. The term "agricultural" is a broad term encompassing a wide range of growing operations, not just farms, and includes nurseries and other horticultural operations. In addition, the general public is likely to expect pesticides and fertilizers to be used in such operations.

Another commenter would exempt farm supply co-operatives and other retail distributors of agricultural chemicals.

Under section 311(e)(5), substances sold as fertilizers would not need to be reported under sections 311 and 312 by retail sellers because such substances are not "hazardous chemicals." However, other agricultural chemicals, such as pesticides, would need to be reported by retailers and suppliers of such chemicals if and when they become subject to the OSHA hazard communication standard. The exemption for substances used in routine agricultural operations applies only to substances stored or used by the agricultural user.

Thus, agricultural chemical retail and storage operations not now covered by the OSHA hazard communication standard will also become subject to reporting under sections 311 and 312 of Title III when the OSHA MSDS requirements for such businesses become effective.

*B. Thresholds*

1. Threshold Quantities for the Hazardous Chemicals in Each Year and the Appropriate Phase-in

Section 370.20 of the proposed rule was designed to allow facilities and State and local governments to phase in the receipt and submission of reports under sections 311 and 312 over three years. In the first year, only chemicals stored in excess of 10,000 pounds were to be reported; in the second year, the threshold was to drop to 500 pounds, triggering reporting on chemicals stored between 500 and 10,000 pounds; in the third year, there was no threshold, so that all remaining hazardous chemicals were to be reported. EPA solicited comments in the proposed rule on the appropriate length of the phase-in period and threshold levels for each year. After receiving and considering the comments concerning the phase-in threshold, EPA reopened the comment period on those issues in the July 14, 1987, notice. EPA requested comment on an option under which the first-year threshold would be 10,000 pounds, maintained at 10,000 pounds in the second year, and dropped to 500 pounds in the third and final year of the phase-in.

a. *Length of phase-in.* Numerous commenters addressed the issues of the number of years for phase-in of reporting and the appropriate threshold levels for each year. By far, most comments on the phase-in approach viewed it favorably, either stating specifically that the commenter was in favor of a phase-in approach, or suggesting alternative phase-in schemes ranging from two to ten years in length. The general reasons given in favor of phasing-in the reporting were: alleviating the administrative burden on government and industry and allowing time for information management planning and for the development of information management systems.

Fewer than ten of the more than 90 comments dealing with the phase-in opposed the approach. Some of these comments questioned whether or not EPA had statutory authority to use the phase-in approach; others said that the information should be immediately available or suggested that a phase-in would not alleviate the burdens on government and industry but simply spread the burdens out over time.

Most of the commenters who favored the phase-in approach supported a 3-year phase-in schedule. Some commenters, however, suggested that

the phase-in be lengthened, in order to provide more time for proper evaluation and management of incoming data, as well as to give industry time to set up appropriate data management systems.

Comments suggesting a phase-in longer than three years fell into three categories. About half of these used EPA's proposed initial threshold but maintained at least one initial or intermediate threshold for two or more years, allowing for more gradual adjustment to the final threshold level. Approximately one-quarter of the comments requested higher initial threshold quantities (ranging from 20,000 up to 100,000 pounds) and suggested reasonable extension to the phase-in period. The third group requested a longer phase-in, without specific quantity suggestions. Several individuals favored a "wait and see" approach, suggesting that EPA should re-evaluate the final threshold decision in the second or third year. Nearly all commenters on the July 14 notice supported the 3-year phase-in.

EPA disagrees with commenters who questioned EPA's statutory authority to establish phase-in thresholds. Section 311(b) provides very broad authority to the Administrator to establish threshold quantities below which a facility may be exempted from reporting under sections 311 and 312. Given the serious concerns raised in the legislative history over the paperwork burden that may be created for State and local governments under these provisions, EPA believes that Congress intended EPA to use this broad authority to establish thresholds that would appropriately balance the public right-to-know with the potentially overwhelming flood of information to State and local governments, especially in the first years of the program. EPA has thus used its authority to fashion the thresholds to meet this Congressional objective. EPA has found no indication in the statutory language or legislative history that the establishment of thresholds based on time as well as amounts of chemicals would be inconsistent with Congressional intent.

EPA agrees with the majority of commenters, who stressed the importance of providing time for local and State governments to set up data management systems by reducing the volume of information being processed initially. Because EPA continues to believe that the phase-in of information is crucial to the development of effective Title III right-to-know programs and that there is no specific limitation on the type of threshold EPA may establish under the statute, EPA has decided to retain the 3-year phase-in approach in the final rule with some modifications.

EPA recognizes the concern expressed by some commenters over the immediate need to have access to valuable information on chemicals stored below the threshold level. In response, EPA believes that the rule reduces the potential loss of important information due to the threshold in several ways. First, as discussed below, § 370.20 provides no phase-in of thresholds for extremely hazardous substances, which are substances identified by Title III as significant for emergency planning. Second, the public retains access, by request, to MSDS for chemicals stored below the threshold. Third, EPA has retained a relatively short, 3-year phase-in schedule so that the baseline threshold is achieved quickly.

EPA recognizes that extending the phase-in beyond three years would provide government and industry with additional time to adjust and thus might be beneficial. There is, however, some burden potentially associated with extending the phase-in period, since it delays the date at which full reporting above the permanent threshold is mandatory. In doing so, it prolongs the uncertainty over how much and what information may be generated and may increase the number of requests during that time. In addition, as discussed below, EPA is not raising the initial threshold above the proposed threshold level (10,000 pounds), thus obviating the need to prolong the phase-in on that ground.

b. *Threshold Quantities*—i. *Final Threshold Level.* One of the most significant issues in the rulemaking was the issue of whether or not EPA should establish a non-zero threshold in the last year of the phase-in.

Approximately 100 commenters addressed the issue of whether or not zero was an appropriate permanent reporting threshold, with or without the phase-in approach. Of these, few favored the proposed reduction of the threshold to zero in the final year.

Arguments made by those favoring the zero threshold emphasized (a) the volume of information that would be lost through establishment of a non-zero threshold, (b) the difficulty of requesting desired information below the threshold without the chemical-specific information in section 311 for all volumes of chemicals, and (c) the potential hazards posed by small quantities of chemicals.

The points raised by proponents of non-zero thresholds fall into several general groups. First, because there are numerous chemicals stored in very small quantities, the data management burden created by zero thresholds could be overwhelming for the recipients of the data, thus jeopardizing public access to the information. Second, they argued that non-zero threshold levels could be established that would capture all substances of concern to the community or emergency response personnel and fire departments. Finally, a large majority of those arguing for non-zero thresholds also suggested that the same threshold should not apply to the extremely hazardous substance list; thus, they argued that information on chemicals of concern at lower levels could be made available without requiring reporting at those levels for all chemicals.

Although several commenters requested that the final threshold be non-zero without specifying the amount, the majority of comments contained suggestions for a final threshold, ranging from de minimis or one-pound quantities up to 50,000 pounds. However, few commenters provided a justification for the numbers they suggested.

EPA believes that there are several competing concerns that must be weighed in determining an appropriate final threshold level. First, information on chemicals of most concern to planners and communities must be readily available. In addition, enough information should be available for members of the public and public officials to be able to ascertain what additional information they want to request. Third, the burden generated for government recipients of the reports should be manageable.

After considering the arguments both supporting and opposing the establishment of a non-zero threshold in the final year of the phase-in, and after considering the comments on the 500-pound permanent threshold that EPA suggested in the July 14 notice, EPA believes that the balance of these concerns weighs in favor of a non-zero threshold.

However, at this time the Agency is not setting a final threshold, but will propose one after conducting a study of alternative thresholds. The Agency has considered 500 pounds (approximately the weight of a 55-gallon drum) as the final threshold beginning in the third year of reporting. Five hundred pounds thus will be the point of departure for discussion of a final threshold. This threshold would eliminate automatic reporting of numerous chemicals that are stored in smaller quantities. As discussed in more detail below, estimates based on available evidence

suggest that 35 to 57 percent of MSDS would be subject to sections 311 and 312 reporting, except upon request, as a result of the 500-pound threshold.

While a 500-pound threshold would eliminate numerous reports of de minimis levels of hazardous chemicals, a substantial volume of information would still be provided to State and local governments. The 500-pound level is also the most common non-zero threshold in effect in States with community right-to-know laws. Over half of all States have community right-to-know laws. Almost one-third of these have a threshold of 500 pounds; the remaining States have thresholds ranging from zero to 500 pounds. This is important since EPA's primary concern in establishing thresholds under sections 311 and 312 is to prevent State and local governments from being so overwhelmed with submissions under this program that effective public access and government use of the information are not possible. A significant number of commenters also supported the 500-pound threshold.

Finally, the expansion of OSHA's hazard communication standard to non-manufacturing employers and the consequent changes in both the number of MSDS and the number of facilities covered by Title III magnify the difficulties associated with a lower, or zero threshold. Because the community right-to-know laws in some of the States described above provide broader coverage than is currently provided under sections 311 and 312 (i.e., they include non-manufacturing facilities that will not be subject to sections 311 and 312 requirements until May, 1988), they provide a significant measure of the continued appropriateness of this threshold when these requirements become applicable concurrently with the expanded hazard communication standard.

Even if EPA were to establish such a 500-pound threshold, this would not suggest that no chemicals of interest to emergency responders, planners, fire departments, or the public are stored in quantities less than 500 pounds, or that all chemicals stored above 500 pounds pose a hazard to the community. Rather, this threshold would attempt to establish a balance between setting the level high enough to avoid an overwhelming paper burden for State and local governments and low enough to avoid a loss of substantial amounts of information. Similarly, a threshold less than 500 pounds would likely present an unmanageable administrative burden. Thus, States or local governments could request information on substances below the threshold, or a State could require reporting at lower thresholds under State law.

EPA has also considered higher final threshold levels. As part of the Regulatory Impact Analysis (RIA) in support of the proposed rulemaking, EPA estimated the percentage of chemicals and facilities that would be covered at different threshold levels. This analysis was revised and expanded for the RIA in support of final rulemaking. The analysis is the final RIA of the effects of thresholds on reporting is based on data sets provided by three States (New Jersey, New York, and Michigan) on the quantity of chemicals stored at a substantial number of manufacturing facilities, for limited lists of hazardous substances. Although the data from each State were adjusted so that the results would be representative of the effects of thresholds nationwide, the limited numbers of facilities reporting, the restrictive chemical lists, and other limitations of the data suggest that the results be viewed with caution.

EPA analyzed four alternatives for the final threshold. Estimates indicate that a 500-pound threshold would lead to reporting by between 50 and 82 percent of the facilities covered by current OSHA requirements, and submissions of between 35 and 57 percent of the MSDS for these chemicals. At this level, the cost to industry in the third year is estimated to be $348 million. At higher thresholds, reporting would be further reduced; a 2,000-pound threshold could result in between 35 and 47 percent of facilities reporting and 22 to 32 percent of chemicals being reported. At the 2,000 pound level, the cost to industry in the third year is estimated to be $225 million. In addition, a threshold that reduces reporting significantly could place substantial burdens on all parties by increasing the numbers of requests made by government and the public for additional information from facilities. On the other hand, a 50-pound threshold could result in between 77 and 90 percent of facilities reporting and between 64 and 79 percent of chemicals reported. At this level, the cost to industry in the third year is estimated to be $387 million. At a zero threshold level, the cost to industry in the third year is estimated to be $500 million. Although information indicates that the 500-pound threshold may represent the most appropriate balance between the broad right-to-know information submission objectives of these provisions and the need to avoid overwhelming State and local governments with the submission of vast amounts of information on de minimis amounts of chemicals, EPA is deferring the establishment of a threshold in the third year of the phase-in. The substantial number and variation of comments received on this issue and the great uncertainty over the impact of these requirements on the recipients of this information, and ultimately on the effectiveness of this program, create a need for further study prior to establishing a permanent threshold level.

After the initial submission of the Section 312 inventory forms in March, 1988, EPA will have more information about the effectiveness of the regulatory thresholds under the federal right-to-know program. During this evaluation, EPA will examine compliance experience with both State and federal right-to-know programs, the completeness of information generated under these programs, the ability of State and local officials to manage and provide public access to this information, the number and source of requests for additional facility information, and volumes of hazardous chemicals covered at a range of thresholds. As stated above, following such review, EPA will initiate another rulemaking to establish the final year thresholds.

ii. *Initial Threshold Levels.* Approximately 50 comments on the proposal addressed the issue of the threshold level in the initial year of a phase-in, either by proposing a specific phase-in schedule of quantities or by registering support of the EPA proposal but suggesting a modification for the final year. Over half of these comments favored 10,000 pounds. The remaining suggestions ranged between 15,000 and 100,000 pounds (one comment suggested up to 500,000 pounds for some chemicals), with a substantial number favoring 50,000 pounds.

In general, arguments that supported raising the first-year threshold emphasized the consequent decrease in the reporting burden and the belief that adequate information on large volume chemicals would still be available with a higher threshold.

After considering comments on the proposal and the July 14 notice, EPA has decided to retain 10,000 pounds as the initial threshold because that level provides the appropriate balance between ensuring that the public has access to information on large volume chemicals and reducing the number of reports to manageable levels in the first years of the program. EPA has rejected establishing higher initial thresholds because it believes that a threshold greater than 10,000 pounds might not

provide sufficient information in the first year of reporting; the best estimates available to EPA indicate that a threshold equal to 10,000 pounds may reduce reporting to less than 13 to 22 percent of facilities or 8 to 13 percent of chemicals. EPA believes that a reduction in reporting below these levels would not be consistent with the community right-to-know purpose of these provisions and would provide marginal benefits in terms of information management, in comparison with a 10,000-pound reporting threshold.

iii. *Thresholds for Non-manufacturing Facilities.* As indicated in the January 27 proposal and in the July 14 notice, EPA believes that section 311 and 312 reporting requirements apply to any facilities subject to OSHA's MSDS requirements for any Title III "hazardous chemical." Because these requirements are self-implementing under the statute, EPA does not need to promulgate a rule in order for these reporting requirements to become effective. Under section 311(d), facilities must submit an MSDS for each hazardous chemical (or a list of such chemicals) to the appropriate State and local authorities by October 17, 1987, or within three months after they are required to have or prepare such an MSDS. Thus, under the statute, facilities newly covered by the OSHA MSDS requirements must submit those MSDS within three months after they are required to comply with the MSDS requirements. Because OSHA's MSDS requirements will become effective for the non-manufacturing sector in May, 1988 (see 52 FR 31852, (August 24, 1987)), such facilities will be required to submit these MSDS under section 311 in August, 1988. Similarly, inventory forms under section 312 for these facilities must be submitted annually beginning March 1, 1989.

However, although the section 311 and 312 requirements take effect without any regulatory action on the part of EPA, the Agency may, by exercising its discretion under the statute to establish minimum thresholds for reporting, limit the facilities or number of MSDS to be submitted under these provisions. EPA has, under this rule, established such thresholds and amended the proposed threshold regulation specifically to provide analogous thresholds to facilities newly subject to these requirements after October 17, 1987.

Some commenters have suggested that EPA limit this rule to facilities currently subject to the OSHA MSDS requirements, i.e., facilities in SIC codes 20–39. However, the effect of such limitation would not be to limit the scope of the section 311 and 312 reporting requirements since such requirements are effective without regulation, but rather to limit the thresholds established by this rule to manufacturing facilities. A zero threshold would thus be in effect for facilities in the non-manufacturing sector that become subject to the MSDS requirements in May, 1988, and would result in precisely the paperwork burden that the thresholds in this rule are intended to avoid.

Moreover, EPA solicited comment on the appropriateness of the thresholds in today's rule as they would apply to the expected OSHA expansion universe. Based on information currently available, EPA believes that the thresholds applicable to the manufacturing sector currently subject to sections 311 and 312 would be equally applicable to the non-manufacturing facilities that will soon be subject to the MSDS requirements. However, as a result of concerns raised over the possible need to provide different thresholds for the facilities newly subject to these requirements as a result of OSHA's expanded MSDS requirements, EPA is undertaking additional analysis of the universe newly-covered by the OSHA MSDS requirements. This analysis will include a more detailed analysis of small business impacts, a review of some current State right-to-know programs that cover non-manufacturing, and the need for different thresholds for such facilities. Following such review and prior to the time that this rule requires actions by the newly covered non-manufacturing universe, EPA will make the analysis public, receive comment, and, if appropriate, revise the relevant thresholds.

**2. Thresholds for the Extremely Hazardous Substances and Other Chemical Lists**

In the proposed rule, EPA provided an exception to the phase-in for substances on the list of extremely hazardous substances under section 302 of Title III. The threshold for reporting of such substances was zero in the first year. EPA requested comments on whether the threshold provision should contain this exception and whether there should be additional exceptions for other special chemical lists.

A majority of the over 60 comments on this issue suggested that thresholds should be lower for some classes of hazardous chemicals (than for hazardous chemicals in general), but that the threshold for such substance should still be non-zero. Several comments requested that there be no "special chemical exception" to the reporting thresholds on the basis that it complicated the process. A few commenters suggested zero or very low thresholds for varying lists of chemicals (e.g., SARA section 302 Extremely Hazardous Substances (EHS), carcinogens on the IARC list, other known human carcinogens, or SARA section 313 chemicals). Those comments that addressed the EHS list were split between suggesting thresholds equal to the "reportable quantities" (RQs) and thresholds equal to the "threshold planning quantities" (TPQs) for the EHS. (See the April 22, 1987, final rule for further discussion of RQs and TPQs. 52 FR 13378.)

Of the comments favoring thresholds that are lower for the EHS than for hazardous substances in general, most favored a non-zero threshold and argued that the burden of accounting for and reporting de minimis quantities far outweighs the risk posed by the EHS in very small quantities. Several commenters argued that reporting of minute quantities of these chemicals creates an unnecessary burden on local and State governments and on emergency response groups who receive the information.

Several arguments were made concerning the appropriateness of the TPQs or the RQs for EHS thresholds. The risk of off-site hazard posed by these chemicals either for emergency planning or for emergency response purposes has already been explicitly taken into account in determining the TPQs and RQs. Thus, several comments argued, quantities stored below these amounts are unimportant for planning, response, or other purposes of sections 311 and 312.

After consideration of the several arguments and approaches suggested by commenters, EPA suggested a one-pound de minimis threshold for the EHS list in the July 14 notice. Based on the additional comments received on the notice, EPA has decided to revise the rule to establish a reporting threshold for each EHS of 500 pounds or the TPQ, whichever is less. This threshold will be effective from the first year of reporting onward.

There are several reasons for establishing these thresholds. First, EPA continues to believe that reporting on the EHS should not be subject to the phase-in. Because, based on the information available to date, EPA believes that the 500-pound level represents an appropriate permanent threshold, the Agency is requiring reporting of EHS at a 500-pound threshold during the first year of

reporting, so that information on these chemicals can be made available to the community, while initial planning efforts under section 303 are underway.

In addition, the EHS list represents chemicals that are of particular interest to the community; the TPQs have been established as representing quantities of these chemicals that may pose risks to the community and, thus, are of interest to emergency planners. The Agency has decided, therefore, that for each EHS for which the TPQ is less than 500 pounds, the threshold in the first year and in subsequent years should be the TPQ. This will ensure that information concerning these chemicals will be available not only to emergency planners, but to emergency responders and the general community as well.

EPA is not expanding the list of chemicals subject to the "special chemical threshold" beyond the EHS list. EPA has singled out the EHS list as an exception to the phase-in for several reasons. Although there are numerous chemical lists referenced in Title III, the Agency believes that information concerning EHS will be critical for States and local governments during the next year when emergency planning efforts are under way. Under section 303 of Title III, local committees must prepare an emergency response plan by October, 1988. Because the EHS list developed under section 302 of Title III is intended to be the basis of initial emergency planning efforts under section 303, information concerning all EHS present at facilities will be critical in the first year of section 311 reporting. EPA believes that such information should be made easily accessible to the local planning committee through mandatory reporting under sections 311 and 312, rather than burdening the committee in the first year of its organization with the need to request information on EHS from each facility under section 303(d) or section 311(c).

*C. Submission of Material Safety Data Sheets*

1. Material Safety Data Sheet (MSDS) or List Option

A facility may meet the requirements of section 311 either through submission of MSDS or a list of chemicals for which an MSDS is required. In the preamble to the proposed rule, the Agency encouraged facilities to exercise the list option whenever possible.

With one exception, the commenters indicated unqualified support of the list option. In addition, many commenters inquired whether use of MSDS for routine reporting of potential community hazards is actually productive and cost-effective. However, numerous commenters indicated that the lists would be difficult to prepare because of the difficulty in using the 23 hazard categories.

As discussed in more detail in Section III. D. EPA has reduced the number of hazard categories in this final rulemaking in order to facilitate list reporting. EPA is continuing to encourage list reporting because it reduces the information management burden on recipients of the information without substantially reducing the amount of information provided.

One commenter requested clarification regarding the right of a State emergency response commission or local emergency planning committee to mandate the submission of a list rather than the actual MSDS. Because the federal law expressly provides that facilities may choose whether to submit a chemical list or each MSDS, EPA has also provided this option in today's final rule. However, State or local governments may effectively limit this choice by establishing reporting requirements pursuant to their own authority.

2. Format and Content of Material Data Sheets

Several commenters requested various changes to the MSDS format, such as the inclusion of the hazard categories on the MSDS.

EPA agrees that the addition of hazard categories on the MSDS would be useful and encourages chemical manufacturers to include this information. However, EPA does not believe that modification of the MSDS can be required in this rule; the content of the MSDS is subject to the regulatory authority of OSHA, not EPA.

A number of commenters raised concerns about the responsibility for accuracy of MSDS information on the part of manufacturers and chemical users who pass on an MSDS received from other manufacturers.

"Downstream" recipients of an MSDS are not generally responsible for its content. However, EPA believes that if an owner or operator is aware of inaccurate or inconsistent information, he should take reasonable steps to clarify the information or alert the recipients of the information when it is distributed that it may be inaccurate.

3. Revisions and Updates

Two commenters requested clarification of the requirement to submit revised material safety data sheets as applied to a facility that had exercised the list option. Further clarification was also requested regarding any obligation to submit a revised MSDS if the original was submitted as a result of a public request.

Section 311(d) requires a facility to submit an MSDS or list by October 17, 1987, or within three months after the owner or operator is required to prepare or have available an MSDS for the chemical, whichever is later. An owner or operator is also required to submit a revised MSDS within three months of the discovery of significant new information concerning a chemical for which an MSDS was submitted. If a facility has submitted only a list of chemicals rather than the actual MSDS, the facility does not need to file a revised MSDS upon discovery of new information. However, after October 17, 1987, if additional hazardous chemicals become present at such facility, a list of these (or the MSDS) must be submitted to the State commission, local committee, and fire department within three months.

Once an MSDS is submitted, even as a result of a request, a revised MSDS must be submitted if the owner or operator receives significant new information concerning the substance. Because the OSHA regulations require MSDS to be revised within three months after a chemical manufacturer or employer becomes aware of significant new information concerning the hazards of a chemical, the Title III regulations merely require that such revised MSDS also be submitted to the agencies that have the original MSDS.

*D. Categories for Reporting*

Section 311 list reporting and section 312 Tier I reporting requirements were initially based on the 23 physical and health hazards identified under OSHA regulations. To facilitate reporting under sections 311 and 312, Title III permits the Administrator to modify the categories of health and physical hazards set forth under OSHA regulations by requiring information to be reported in terms of "groups of hazardous chemicals which present similar hazards in an emergency." Additionally, for Tier I reporting, the Administrator may require reporting on individual hazardous chemicals of special concern to emergency response personnel.

In the January 27 proposal, the Agency proposed the use of the 23 OSHA categories for reporting but solicited comments on approaches for modification of the reporting categories. EPA recognized that a smaller number of reporting categories might facilitate the manageability of the information and enhance its usefulness, particularly since information on chemicals that

present more than one hazard must be provided in all applicable categories. EPA specifically requested comment on two approaches for modification: Use of the eight DOT hazard labeling categories and use of a 5-category scheme with two health hazard categories and three physical hazard categories. The July 14, 1987, **Federal Register** notice specifically requested comment on the proposed use of the 5-category scheme.

In response to the January 27 proposed rule, EPA received over 100 comments that disagreed with the use of the 23 OHSA categories, while only four commenters supported their use. Many of those commenters that disagreed provided alternative categorization schemes. Many comments supported the Department of Transportation (DOT) categorization scheme in combination with additional health hazard categories. The main advantage to using the DOT categorization would be that emergency response personnel are already familiar with these categories. However, it was designed for hazardous material transportation and reflects an emphasis primarily on immediate health and physical hazards. Thus, the Agency believes that the DOT categories would have to be revised to address delayed (chronic) hazards adequately before this option could be used for Sections 311 and 312. EPA believes that altering the DOT categorization scheme would result in some confusion and reduce the effectiveness of this option.

EPA received several additional proposals for the modification of the reporting categories. However, all of these alternatives were rejected because they either did not adequately encompass the OSHA hazard classes, did not sufficiently reduce multiple reporting, or did not sufficiently reduce the burden of reporting and interpreting data by decreasing the number of reporting categories.

After consideration of these comments, the suggested alternatives, and the burden of using the proposed 23 categories, EPA has revised the rule to reduce the number of reporting categories. Today's rule contains the 5-category scheme described by EPA in the Preamble to the proposal and in the July 14 notice: two health hazard categories (immediate or acute hazards and delayed or chronic hazards) and three physical hazard categories (fire hazards, sudden release of pressure hazards, and reactivity hazards). This scheme was supported by a substantial number of commenters.

A number of other commenters disagreed with the use of the 5-category scheme because they thought the categories were too general and did not represent groups of hazardous chemicals that present similar hazards in an emergency. EPA disagrees with these commenters. Although the categories could be subdivided further, the Agency believes this could complicate the categorization process and could result in inconsistencies in reporting. EPA believes the 5-category scheme will be useful to emergency response personnel by conveying general information on the types of hazards a chemical may present in an emergency response situation and by supplementing other sources of information commonly used by emergency response personnel.

EPA agrees with the numerous commenters who noted that this categorization scheme should significantly reduce the paperwork burden of reporting, minimize multiple reporting and double counting, and enhance the clarity and usefulness of the information reported. The five categories have several advantages over the other proposed alternatives because they encompass all of the OSHA categories as well as all of the DOT categories, and they address delayed (chronic) health hazards as well as immediate (acute) health hazards. The Agency plans to provide written guidance to help facilitiate reporting so that this categorization scheme can be easily used by both large and small reporting entities.

*E. Mixtures*

EPA received several comments regarding the reporting of mixtures. One commenter requested clarification of the term "mixture." Another desired guidance in applying threshold levels to mixtures. Several commenters stated their belief that reporting of mixtures would be difficult since many mixtures have unknown compositions.

In response to the request for clarification of the term "mixture," EPA has revised § 370.28 of the rule to include the definition of mixture used by OSHA in the hazard communications standard. 29 CFR 1910.1200. In addition, § 370.28 has been revised to indicate how the threshold levels apply to mixtures. The rule now states that if the reporting is on each component of the mixture that is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) should be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture. If a mixture is reported as whole, the threshold applies to the total weight of the mixture.

Finally, where mixtures have unknown composition, facilities should report the mixture as a whole.

*F. Public Access to Information*

Title III contains a number of provisions relating to public access to information submitted under sections 311 and 312, many of which were codified in today's final rule. Section 324 of Title III, which is not codified in the final rule, requires SERCs and LEPCs to make all MSDS, lists, and inventory forms that are submitted under sections 311 and 312 available to the public during normal working hours. This is the only source of Tier I information for the general public, and there is no access to Tier I below the regulatory threshold.

Section 370.30(a) of the regulation codifies section 311(c) of Title III and provides that any person may request an MSDS through the LEPC. If the MSDS is not in the possession of the LEPC (because a facility had the hazardous chemical only in amounts below the threshold or a facility had submitted only the list of chemicals), the LEPC must request the MSDS from the facility and the facility must, under § 370.21(d), submit the MSDS within 30 days. Under § 370.31, the LEPC must provide the requested information to the requester.

Section 370.30(b) codifies section 312(e) of Title III and provides that any person may request Tier II information concerning a specific chemical at a facility through the LEPC or SERC. If the Tier II information is not in their possession, the SERC or LEPC must request it from the facility if the chemical is stored at the facility in quantities above 10,000 pounds or if the requester is a public official. If the chemical is present in quantities below 10,000 pounds, the response by the SERC or LEPC is discretionary. Under § 370.25(c) of the final rule, a facility must submit requested Tier II information within 30 days. Under § 370.31, the LEPC or SERC must then provide the Tier II information to the requester.

1. Information below Thresholds

In the proposed rule EPA established temporary thresholds below which facilities would not be required to report under sections 311 and 312. However, those thresholds were not applicable to public requests for information on hazardous chemicals. Thus, facilities would need to report on hazardous chemicals below the thresholds, but only upon request. Although EPA codified the requirement that below-threshold requests be justified for Tier II information under section 312, no such

justification was proposed for below-threshold requests for MSDS. EPA solicited comment on its approach to thresholds and public access.

Commenters were split over the issue of public access to information below thresholds through the LEPC. In addition, some commenters believed that requests for below-threshold MSDS information should be justified, and some asked EPA to set guidelines for demonstrating adequate justification.

With respect to issues concerning request justification, section 312 is explicit about the justification of need required in public requests for Tier II information below 10,000 pounds if such information is not already in the possession of the SERC or LEPC but is silent on the issue of what should be included in the statement of need. EPA believes that the task of defining appropriate criteria for the justification of need should be left to the SERCs and LEPCs, who must ultimately decide whether to remit such a request. With regard to MSDS information below the threshold, neither the statute nor this regulation requires that the need underlying a request be justified. Congress specified in section 311(c)(2) that MSDS be submitted upon request by any person. The Agency thus believes that the preservation of access to all MSDS information by the public is most consistent with the intent of section 311.

2. Justification of Need

A number of commenters posed more specific questions on the necessity of justifying requests for Tier II information. One felt "need" should relate to the potential of a hazardous chemical directly to affect either person or property. Others noted that facilities should be able to review requests for Tier II information and be allowed to comment on sensitivity of information.

As indicated above, however, the LEPC and SERC have ultimate responsibility for setting guidelines in this area since the statute and today's final rule give them the decision-making authority in granting requests for Tier II information. Therefore, EPA believes that issues concerning the statement of need should be left to local and State officials.

A few commenters requested that a strategy be developed to assist the SERC and LEPC in fulfilling their responsibilities for public availability. Several other commenters felt programs should be developed to help the general public interpret and use the information. EPA intends to provide such guidance in the form of brochures and pamphlets to be published and distributed through the regional offices to SERCs and LEPCs at a later date. EPA recently used a series of workshops and other presentations to provide information on Title III to the public.

3. Other Clarification

Several commenters requested changes in the time frames for providing information to the public. Some commenters had general questions about how the public would have access to MSDS and inventory information. The public may request Tier II information through either the SERC or the LEPC. For quantities below 10,000 pounds, the SERC or LEPC may exercise discretion in forwarding these requests to a specific facility. Concerning MSDS requests, section 311 and today's final rule place the responsibility for handling requests only in the LEPC. States may, however, under their own authority, also require provision of such MSDS to the SERC.

One commenter requested that the rule clarify that any person may request Tier II information. Although the rule explicitly states that any person may request Tier II information, there are certain instances in which it is not automatically provided. For instance, a facility may opt to withhold chemical location information from the Tier II form, and the public would not have access to this location information. A person may request Tier II information for chemicals stored at a facility in quantities less than 10,000 pounds, but if the SERC or LEPC does not already possess the information, the requester would be required to give a written statement of need. Based on the statement, the LEPC or SERC may, where appropriate, request the information from the facility. A facility may also withhold chemical identity from disclosure by submitting a trade secret claim under section 322. Where a facility withholds chemical identity by virtue of trade secret provisions, the public may challenge the withholding by submitting a petition to EPA pursuant to section 322.

*G. Trade Secrets and Confidentiality*

EPA received several comments in support of the provision for withholding location information from the public at the facility's request. While a few commenters indicated a need for criteria for determining a confidential location, EPA agreed with other commenters that a request on the part of a facility owner or operator is sufficient. Section 324 allows a facility to request withholding of location information without any determination that such location would be confidential.

The Agency also received numerous comments regarding the protection of trade secret information under sections 322 and 323 of SARA. These will be addressed as part of EPA's rulemaking on trade secrets under sections 322 and 323, to be proposed later this year. It should be noted, though, that if a facility wishes to make a trade secret claim, it is required to submit the federal Tier II inventory form to EPA, rather than any alternative State form, with appropriate substantiation. Such trade secret claims should be sent to: U.S. Environmental Protection Agency, Emergency Planning and Community Right-to-Know, P.O. Box 70266, Washington, DC 20024-0266.

*H. Design and Content of Forms*

The most significant comments on the design and content of the Tier I and Tier II forms concerned the calculation of the average daily amount and the reporting format for storage location. Other significant comments concerned the emergency contact, the certification statement, and the Dun & Bradstreet number. In response to these comments, as well as comments on the general layout and graphic design of the forms, EPA has revised the section 312 reporting forms. Following is a discussion of these comments and EPA's response.

On the proposed Tier I and Tier II forms, EPA required facilities to report maximum daily amount and average daily amount in prescribed ranges. Several commenters approved of the proposed reporting ranges on the Tier I and Tier II forms, but several more believed the ranges were too broad. EPA received suggestions to narrow the ranges, add a range category of 0–9 pounds, combine the two lowest ranges, or devise ranges that correspond to powers of ten. A few commenters favored broader ranges.

Upon consideration of these comments, EPA has chosen to retain the ranges set forth in the proposed rule. The Agency believes that the ranges adequately balance the trade-off between protection of confidential information and provision of useful data. In addition, the present ranges are consistent with those proposed for use on the section 313 reporting form and those used on the Toxic Substances Control Act (TSCA) inventory form.

Several commenters favored EPA's proposed method of calculating average daily amount; that is, by totaling all daily weights and dividing by 365, or totaling all monthly weights and dividing by 12. Several other commenters, however were concerned that the results obtained by the

proposed method would be misleading because it would produce artificially low amounts for those chemicals present on site during only short periods of time throughout the year.

The Agency has decided to revise the method of calculating average daily amount so that the figure is based upon the number of days the chemical is actually on site. Thus, facilities should total all daily weights and divide by the number of days the chemical was on site. This method of calculation produces a more accurate figure for average daily amount, particularly for those chemicals that are on site for only a short time each year. To reflect the amount more accurately, however, EPA believes that it will be necessary to report the number of days used in the calculation and has revised the form to require reporting of this information.

The Agency received several comments concerning the maximum daily amount. As many commenters favored the method of calculation as expressed doubts concerning its ultimate usefulness. One commenter suggested that EPA require facilities to report maximum storage capacity instead of maximum daily amount.

Because the maximum daily amount describes a "worst case" scenario, it is useful to both emergency planners and emergency responders. It is important for them to know the maximum amount of hazardous chemicals that they might actually encounter at any time. Because storage capacity may not be an accurate reflection of the amount of hazardous chemicals actually on site at any one time, EPA believes that the reporting of maximum storage capacity is not an appropriate substitute for the maximum daily amount. Thus, EPA has not required reporting of maximum storage capacity instead of maximum daily amount. However, EPA is aware that maximum storage capacity may be the best information available to some facilities in calculating the maximum daily amount.

EPA received numerous comments regarding the "location" section of the Tier II form. Several commenters requested the use of any site identification procedure acceptable to local emergency response agencies; others suggested that EPA design the location coding system solely for ease of data entry. Several commenters gave specific suggestions for revision of the location identification system—namely, grid or quadrant systems. Several other commenters suggested that EPA allow facilities to report that chemicals are unbiquitous at the plant. Based on these comments, EPA has revised the Tier II form to provide for reporting of the building or lot, at a minimum, and to allow facilities to describe briefly on the form itself the location of hazardous chemicals, rather than requiring them to provide a site plan or site co-ordinates. EPA believes that the narrative approach will provide more flexibility for a facility, in conjunction with its SERC, LEPC, and fire department, to identify the method of providing the most useful chemical location information for specific emergency response and information management needs and capabilities of the community in which the facility is located.

EPA believes that additional requirements for location information, such as site plans or quadrants or grid systems, may be useful on a site-by-site basis, but are not necessary for each facility. If a State or local government desires such additional information, it may require it to be submitted under State or local law as a supplement to the federal form. However, the Agency encourages State and local governments to co-ordinate reporting formats so that facilities are not subject to duplicate or inconsistent reporting requirements.

Some commenters requested EPA to state the exceptions to reporting on the inventory forms. Another inquired about the correct number of exemptions.

The exemptions from reporting under both the OSHA hazard communication standard and section 311 of Title III are set out in the instructions to the form. The instructions on the proposed forms included eight reporting exemptions because EPA merged the OSHA and Title III exemptions where there appeared to be substantial overlap. In this final rule, the instructions to the inventory forms state the OSHA and Title III exemptions separately for clarity and accuracy.

EPA received numerous comments regarding the certification statement on the Tier I and Tier II forms. Several commenters raised concerns that the statement implied the owner's or operator's first-hand knowledge of the conditions at the facility relevant to Title III. In response to these concerns, EPA has modified the certification on the final form by deleting the word "immediately," to make clear that the signatory is responsible for the data on the form but has not personally interviewed those principally responsible for performing the calculations. The certification on the final form now reads: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete."

A number of commenters wanted EPA to eliminate or revise the requirement for a 24-hour contact and telephone number. One commenter suggested that EPA require the same number of emergency contacts on Tier II as on Tier I.

The emergency contact is a person, or office at which persons will be available, who can aid responders in the event of an emergency at the facility. The emergency contact need not be a person with expertise concerning the chemical hazards at the facility, but he or she must be available to act as a referral if emergency responders need assistance in responding to a chemical accident at the facility. Although the Agency requires facilities to supply the name of only one emergency contact, both the Tier I and Tier II forms will have space for two. A facility may supply two emergency contacts as necessary to ensure 24-hour availability.

Numerous commenters inquired about the extent to which they could use their computers for reporting. The majority of the comments focused on the acceptability of computer-generated facsimiles of the forms; others dealt with electronic transmittal of data.

To the extent possible, EPA has designed the Tier I and Tier II forms to accommodate computer output. Since EPA will not receive the information, however, the issues regarding computer facsimiles and electronic transmittal are more appropriately addressed to the recipients of the information at the State and local levels. However, EPA does not believe that any provisions of section 312 would prohibit computer generated facsimile forms or electronic transmittal of data.

Several commenters stated that EPA should not require hazard category information on the Tier II form. Although the legislation requires hazard category information only on the Tier I form, EPA has designed Tier II as a worksheet for the preparation of Tier I. For this reason, and because the hazards may provide helpful data to the users of chemical-specific information, EPA believes that hazard categories are an essential element of the Tier II form and has retained this requirement in the final form.

Although several commenters questioned the necessity for the Dun & Bradstreet identification number, the Agency has opted to retain this requirement because of its general usefulness as a widely known and accessible identifier, unique for each

facility. In response to commenters who stated that Dun & Bradstreet numbers should not be required because they did not have such a number, EPA has revised the instructions to the form to indicate where facilities can obtain the number. (Information collection requirements are approved by Office of Management and Budget under control number 2050–0072.)

*I. Integration of Title III Federal Requirements With State and Local Programs*

A large number of commenters registered concern about the potential for duplication in data collection, since Title III requirements overlap with reporting provisions under some State and/or local laws. Some commenters would prefer to comply with Title III through equivalent State programs; others suggested that the reporting rules be flexible enough to allow integration with existing programs.

Although section 321 states that Title III generally does not pre-empt State or local laws, including similar community right-to-know reporting, the Agency strongly discourages duplicative reporting systems that would increase the community right-to-know paperwork burden and thus potentially reduce the effectiveness of the program and of public access to information. EPA encourages States to modify their community right-to-know requirements to accommodate Title III without eliminating additional requirements that are beneficial to State or local needs. The Agency also advises States to consider reporting requirements that are applicable to local emergency planning committees and fire departments. To the extent possible in this final rule, the Agency has attempted to provide flexibility for State and local implementation and integration with their existing programs.

Several commenters recommended that State and local jurisdictions be allowed to determine the method of reporting.

In the final rule, EPA has tried to provide as much flexibility as possible to the local and State officials who must implement this program, while at the same time provide a degree of standardization to the regulated community and ensure that statutory requirements are met. EPA has thus revised the regulations to specify the circumstances under which a State or local form can be used in lieu of the Tier I and Tier II forms published today. Revised §§ 370.40 and 370.41 of the final rule state that facilities will meet the Section 312 requirements if they submit the published form, or any State or local form that contains identical content. "Identical content" means that, at a minimum, the same information requested on the form published in today's final rule must be requested in some portion of the State form. States may, in addition, use the form as published today but add supplemental questions, either interspersed throughout the form or attached at the end.

*J. Information Management*

With respect to data management issues, commenters focused on two principal points. First, the majority of commenters on this issue strongly expressed the conviction that the entire program can be made workable only if the information is handled by computer systems. The second principal issue raised by commenters was the need for assistance in organizing the material; designing and selecting systems; co-ordinating the use of the material among SERCs, LEPCs, and fire departments; and ultimately making the information available to the general public.

Specific comments concerned the need to allow information submission in computer-readable media and for guidance from the federal government to aid information management at the State and local levels. A recurring message in the comments was the need for the federal government to play an active role in solving the extensive data management problems triggered by Title III. Suggestions were for EPA, alone or with OSHA, to develop model MSDS databases, to design or develop effective data management and communications techniques for information systems, to convene a high level workgroup to draft a plan for solving the problems, and to provide seed money to each SERC for development of its own MSDS information system. Commenters also raised general concerns about the sources for financial support to implement the legislation and the time necessary to prepare for implementation.

In response to the general information management concerns raised by commenters, the Agency agrees that the data resulting from Title III compliance would best be managed through a computerized system. EPA recommends that the LEPCs and fire departments work closely with the SERCs to develop flexible systems that address the particular requirements of each planning district. However, because most of Title III is carried out through State and local organizations, it is not appropriate for the Agency itself to recommend or design data management systems, to establish a national database under sections 311 and 312, to specify data collection points, or to make any other information management decisions that belong to the State and local authorities implementing the community right-to-know program. Thus, although EPA shares commenters' concerns over the critical data management needs generated by Title III, EPA believes that the most appropriate role for the Agency in information management under sections 311 and 312 will be one of technical assistance to State and local entities in developing effective information management systems. The Agency is reviewing such systems in an effort to identify useful systems that could meet State and local needs and also intends to publish technical guidance regarding the development of such systems by States.

EPA acknowledges that the provisions of Title III concerning hazardous chemicals and community right-to-know present information management problems that are difficult to implement, given the statutory time-frames and governmental budget constraints. Of all the sections of Title III, sections 311 and 312 present by far the largest information management burden for State and local governments. EPA's concern over this issue has been the principal basis for several key regulatory decisions during this rulemaking. For instance, to permit time to work out information management systems and to ensure that State and local capabilities are not overwhelmed during initial implementation, EPA is establishing a 3-year phase-in schedule with high initial reporting thresholds for both sections 311 and 312.

State and local governments also need time to obtain funding and to establish the organizations and processes to implement this legislation. In order to provide as much flexibility as possible to State and local governments in establishing their Title III programs, EPA is leaving decision-making concerning the medium to be used in reporting (e.g., paper, magnetic tape, telecommunication lines) to States and local governments.

Some State and local governments already receive information required under sections 311 and 312 from facilities in their jurisdictions, and some make this information available to the public. To the extent that these submissions under State or local law meet the requirements of sections 311 and 312 regarding the content of submission, timing, and recipients of the information, facilities submitting such information will be in compliance with the federal requirements. Duplicate

submissions under the federal community right-to-know program are unnecessary. Also, in some instances, it may be permissible for fire departments to designate such State systems as the address for their MSDS submissions, provided that these systems will support the emergency response needs.

*K. Regulatory Impact Analysis*

A number of comments addressed various aspects of the Regulatory Impact Analysis. Comments ranged from general concerns that estimated costs for industry or government were too low to specific comments on the time, personnel, or equipment attributed to individual compliance activities. The comments also addressed the methodology used in the RIA, including compliance activities they felt had been omitted by government, the inclusion of costs for requests and trade secrets in aggregate costs, estimating costs for facilities covered by the OSHA expansion, and expanding the treatment of small business costs.

A number of commenters stated that the time estimated for industry to fill out the forms, or the estimates of the time and space required by government to maintain MSDS, were too low. Other commenters argued generally that estimates of industry costs were too low and gave estimates ranging from one and one-half to ten times the EPA estimates.

EPA has revised the analysis to reflect variations in costs for sections 311 and 312 by facility size and number of MSDS. EPA has also modified the section 312 inventory forms and clarified the instructions in this final rulemaking, which should reduce the amount of time it will take industry to comply with these requirements. Wage rates used in the RIA have also been increased to reflect growth in wages and the technical personnel being used to comply with regulations. EPA believes that the costs imputed to the final rule reasonably estimate, on average, the time and other costs that will be incurred by facilities complying with the requirements of the regulation.

Several commenters addressed government costs, stating that estimated costs were too low, that not all necessary government activities were considered, or that additional personnel would be required to comply with sections 311 and 312. One commenter stated that EPA's estimated costs were too low by as much as an order of magnitude.

In response to these comments, EPA has revised the time requirements to include additional time spent, particularly by State and local government, on several activities. Wage rates in the government are assumed equal to those in the private sector; thus, government wage rates have also been revised to reflect the estimated change in private sector wages. It should be noted that the RIA has assumed that government agencies do the minimum activities necessary to comply with the regulations. Costs are intended to reflect, on average, the costs that will be incurred by representative government entities undertaking these activities. However, community right-to-know is essentially a State and local program, and the costs of implementing its provisions will depend on the activities undertaken by each entity. Thus, the costs presented in the RIA may underestimate the actual costs to individual government entities with sufficient funding and the ability, need, or constituency to be proactive in implementing Title III.

Several commenters said that EPA has not included in the RIA the costs of requesting information, responding to requests, or making trade secret claims. EPA has modified its approach and provides additional sensitivity analysis on the possible magnitude of some of the costs associated with information requests. However, it should, again, be stressed that community right-to-know is a State and local program; the number of requests is highly dependent on the extent and nature of the uses to which data are put, both by public officials and by private citizens and organizations. These uses, in turn, depend on the manner and breadth of the implementation and outreach plans of State and local governments, which makes the costs associated with requests for information difficult to predict. Thus, while a sensitivity analysis is provided, the costs of requests are not aggregated into total costs. The costs associated with trade secrets are being addressed in a separate rulemaking that is under way for the Title III trade secret provisions, sections 322 and 323 of SARA.

Numerous comments point out that EPA did not address the costs that may be associated with any forthcoming expansion of the OSHA hazard communication standard. These costs are included in a supplemental analysis, which is part of the final RIA. These costs are not aggregated into total costs of sections 311 and 312; total costs reflect the costs to facilities and government of complying with sections 311 and 312, given the current scope of the OSHA hazard communication standard.

Other commenters said that the costs estimated for small business were too low or that the regulation constituted a significant impact on small business. An additional group of commenters submitted a form letter saying that the regulations would be an immense burden on small business.

EPA has expanded its small business analysis considerably for the final rulemaking. In particular, per facility costs are varied to reflect both facility size and the estimated number of hazardous chemicals that are present, on average, at a facility in a particular SIC code and size class. To determine whether the regulation will have an impact on small business, a small facility is defined as one with fewer than 20 employees. This group is more likely to show an impact than the broader group (50-150 employees) suggested in the comments. The analysis then looks at the impact on small business using several criteria, including the ratio of costs per facility to sales. After consideration of this additional analysis, EPA reached the same conclusion as in the proposed rulemaking; a substantial number of small businesses will be affected, but the impact will not be significant. Thus, the Agency is not performing a Regulatory Flexibility Analysis.

*L. Miscellaneous*

1. Enforcement/Penalties

The Agency received numerous comments and queries on the subject of enforcement. Some commenters stated that a violation should be treated as a one-time occurrence and not a continuous violation as specified in the proposed rule. Others requested flexibility in determining violations and assessing penalties, especially where the owner or operator makes good faith efforts toward compliance. Still another commenter asked how enforcement would be accomplished.

With regard to one-time versus continuous violations, section 325(c)(3) of Title III provides that each day a violation of section 311 and 312 continues shall constitute a separate violation. EPA has therefore retained this provision in the final rule. With respect to issues concerning how EPA will enforce compliance with these provisions, EPA is preparing a compliance strategy for Title III that will address these issues. Criteria for determining penalties will also be set out in that document.

2. Compliance/Timing

Two dozen commenters addressed questions concerning compliance and scheduling. Their statements ranged

from a view that the 45-day response period for Tier II requests is unrealistic, to a request that EPA stipulate a 15-day period for a SERC or LEPC to respond to a public request for MSDS or Tier II forms and that the same 15-day deadline be placed on the facility.

EPA has retained the 45-day schedule for response to Tier II public requests as specifically provided under section 312. In the regulation, EPA establishes a 30-day schedule for response by an owner or operator to SERC or LEPC requests for MSDS and Tier II information. EPA believes that the 30-day timetable for Tier II information is necessary to ensure adequate time for the SERC and LEPC to meet the statutorily-established response time. The same period was estalished for MSDS responses to avoid confusion over applicable time periods under this rule. However, the Agency has also rejected the establishment of other time limitations in order to preserve flexibility at the State and local levels with respect to timing of responses.

3. Use of Tier I and Tier II Forms

Numerous comments were received indicating that Tier II information is more useful than Tier I information. EPA agrees with these commenters. For this reason, the Tier II form has been designed for potential use as a worksheet and guide for gathering information ultimately to be used in the Tier I aggregate data. Section 312 and § 370.25(b) of the regulations allow facilities to submit the Tier II form in lieu of Tier I.

Several commenters asked whether the Tier II inventory form could be submitted instead of the MSDS or list; others favored the option of submitting the MSDS instead of Tier I and Tier II. Under today's rule, the Tier II inventory form cannot be submitted in lieu of the MSDS; nor can the MSDS submission constitute compliance with inventory form reporting. Title III establishes several distinct reporting requirements under community right-to-know that serve different purposes. The MSDS submission under section 311 allows the public to find out what chemicals are present at facilities and the types of hazards they present. The 312 inventory forms provide more specific location, storage, and quantity information. These requirements are not alternative.

4. Need for Funds

A dozen commenters indicated a need for funding in order to carry out the Title III requirements.

No federal funding has been provided in support of Title III community right-to-know requirements at State and local levels. However, EPA intends to provide technical support to States in carrying out their responsibilities.

The Agency received a number of comments regarding the burden that Title III places on both industry and State and local agencies in terms of costs, manpower, and record-keeping. EPA has made every effort in this rulemaking to minimize this burden, while effectively satisfying the legislative intent of Title III. The Agency has instituted a 3-year phase-in period, encouraged the use of the list option as opposed to the MSDS option, and reduced the number of reporting categories for physical and health hazards. Additionally, the Agency as conducted outreach activities such has teleconferences and workshops targeted at overall Title III implementation.

5. Responsibility for and Appropriateness of Data

EPA received many comments requesting clarification of the submitter's responsibility for the accuracy and completeness of submitted data.

Several commenters felt that only producers, importers, and distributors should be responsible for the accuracy of chemical hazard assessments and that users should not be responsible for initiation or verification of data.

While producers, importers, and distributors are responsible for providing accurate MSDS information, downstream users who submit, or rely upon, such MSDS should make reasonable efforts to correct information that they know to be inaccurate or to inform the recipients of the information of its inaccuracies.

A number of commenters noted that many workplace substances classified as hazardous chemicals under OSHA regulations do not present a danger to communities. Others mentioned cleaning and maintenance products as examples and asked that they be excluded.

Many work-place substances do not, in fact, constitute a hazard to the community. Sections 311 and 312 focus primarily on the presence of hazardous chemicals within the community and the need for public access to information about their existence whether or not they pose a present hazard to the community. However, many cleaning and maintenance products are excluded from the definition of hazardous chemical as consumer products, or need be reported only on request if they are present in quantities below the threshold.

One commenter asked for a clarification of the obligations of facility owners or operators who voluntarily provide MSDS to customers and employees.

If an owner or operator chooses to provide MSDS to customers and employees even though he is not required to do so under OSHA, the owner or operator does not need to submit the MSDS or Tier I and Tier II forms under Title III since these requirements only apply to persons required to prepare or have available MSDS for hazardous chemicals under OSHA regulations.

6. Scope of the Section 311 and 312 Requirements

Several commenters remarked on the transitory nature of some of the information and the necessity of frequent revisions.

Under section 312, the reporting requirement is annual and thus will automatically capture new or revised information. Facilities may, and in most cases should, inform their local or State government or fire department immediately if there is a change in the emergency contact number or other significant information on the inventory forms. Facilities subject to section 303 must provide information on relevant changes at the facility to the LEPC for planning purposes. With respect to MSDS submission under section 311, under today's rule, a revised MSDS must be filed with the LEPC, the SERC, and the local fire department within three months after significant new information is discovered.

EPA received a number of comments on the scope of the reporting requirements. According to one commenter, reporting on all chemicals required to have an MSDS is too broad, because chemical suppliers have interpreted the OSHA hazard communication standard to include the broadest range of chemicals in order to avoid future liability. Another commenter felt that the reporting requirements would be too narrow if only SIC codes 20–39 were covered.

Title III requires that MSDS be submitted for each hazardous chemical for which an MSDS is required under OSHA except where EPA establishes a threshold for reporting. EPA does not believe that sections 311 and 312 requirements can or should be applied to facilities not required to have MSDS under OSHA regulations. However, when OSHA's expansion of the hazard communication standard to non-manufacturing facilities becomes effective, the reporting requirements under sections 311 and 312 will automatically apply to the facilities newly covered by the OSHA

requirements. Also, EPA does not believe that the expansive interpretation of the OSHA hazard communication standard given by members of the regulated community provides a sufficient basis for limiting the scope of section 311 and 312 requirements, especially in light of explicit statutory coverage and specific statutory exclusions.

To the extent possible, EPA has taken into consideration the expansion of the 311 and 312 universe. EPA has limited authority to revise sections 311 and 312 requirements and has in this rule exercised its full authority to ensure an effective community right-to-know program. In this rule, EPA has mitigated impact by setting high initial thresholds to avoid undue burden in early implementation stages, reducing hazard categories, developing outreach programs, and retaining flexibility for local and State governments as much as possible. However, as discussed earlier, EPA will review the minimum thresholds established in this rule when OSHA's expansion of its hazard communication standard becomes effective and will undertake a rulemaking, if necessary, to revise those thresholds to avoid overwhelming MSDS and Tier I submissions to State and local officials as a result of the expansion.

One commenter recommended that all required information, including updates, be submitted to both the State and local organizations to maintain consistency in reporting.

EPA agrees and has exercised its general rulemaking authority under Section 328 to require submission of the updated MSDS to all entities receiving the original MSDS. Otherwise, under the proposed rule, only the LEPC would receive updated information and thus have current information on a facility. A new MSDS at the facility must also be submitted to all three entities (as indicated in § 370.21(c)(2)).

## V. Relationship to Other EPA Programs

### *A. Other Title III Programs*

#### 1. Subtitle A—Emergency Planning

Title III of SARA establishes several reporting and notification requirements in addition to sections 311 and 312. Subtitle A of Title III contains several notification provisions that are critical to local emergency planning. In order to facilitate local emergency planning, under section 302 facilities that have present an amount of an extremely hazardous substance in excess of the corresponding threshold planning quantity were required to notify the State emergency response commission by May 17, 1987, or within 60 days of acquisition of such a substance. Section 303 requires that such facilities designate a representative to work with the local emergency planning committees in the Title III planning process and provide information concerning the facility that may be relevant to emergency planning. Section 304 establishes immediate release reporting requirements to enable timely and effective local response to releases of extremely hazardous substances and CERCLA hazardous substances. These emergency planning requirements are set forth in a final rule published on April 22, 1987. 52 FR 13380. These requirements are unaffected by today's rule.

Today's rule sets out the reporting requirements under sections 311 and 312, Subtitle B of Title III. The focus of Subtitle B is public access to information concerning chemicals in their communities rather than emergency response, and thus reporting requirements under Subtitle B are both broader in scope than Subtitle A and, under section 312, continuing in nature. However, the information obtained or made available under sections 311 and 312 of Subtitle B may also be of significant value to emergency responders.

Subtitle B will make available to the local and State emergency planners information on other chemicals and facilities, beyond those identified under Subtitle A, that they may wish to include in their emergency planning efforts. Tier II information under section 312 will provide specific information on the quantities and locations of hazardous chemicals. Thus, sections 311 and 312 provide information beneficial to the emergency planning required under Subtitle A. As discussed in the April 22, 1987, final rule, the facilities identified as a result of that rule are only a "first cut" of the facilities and potential chemical hazards for which emergency planning may be necessary.

#### 2. Subtitle B—Section 313 Toxic Chemical Release Inventory

Subtitle B also establishes reporting requirements under Section 313. Beginning July 1, 1988, certain manufacturing facilities at which there is a "toxic chemical" manufactured, processed, or otherwise used in excess of a statutory quantity must annually report to EPA and the State, with respect to each substance, the maximum amount present at the facility, the treatment or disposal methods used, and the annual quantity released into the environment. These requirements are the subject of a separate rulemaking, proposed for public comment on June 4, 1987. 52 FR 21152.

#### 3. Trade Secrets

Title III also establishes provisions for the protection of trade secrets. Section 322 of Title III entitles persons required to submit information under sections 303, 311, 312, and 313 to withhold the specific chemical identity from disclosure under certain conditions. In order to withhold such information, however, a person must submit the withheld information and an explanation to EPA. Under section 322(c), EPA is required to publish regulations to implement the trade secret provisions as soon as practicable after the enactment of SARA. EPA intends to propose trade secret regulations under Section 322 later this year.

### *B. CERCLA Reporting Requirements*

CERCLA section 103 establishes notification requirements for facilities at which there is a release of a reportable quantity (RQ) of a CERCLA hazardous substance. Such releases must be immediately reported to the National Response Center (800–424–8802, or in the Washington, DC metropolitan area at 202–426–2675). These reporting requirements and the list of hazardous substances and RQs are found in 40 CFR Part 302 and are for the purpose of alerting federal responders to a potentially dangerous release of a hazardous substance so that any necessary response can be made in a timely fashion. These notification requirements are similar to the release notification requirements under section 304 of Title III that must be made to local and State response personnel and are unaffected by today's rule.

## VI. Effective Date

Section 553(d) of the Administrative Procedure Act (APA) generally requires that the effective date of substantive rules be no earlier than 30 days after publication in the **Federal Register**. However, section 553(d) also provides exceptions to the 30-day effective date requirement for rules that grant an exemption or relieve a restriction and for other "good cause."

EPA has made this rule immediately effective upon publication for several reasons. First, the submission of MSDS or alternative lists is required under section 311 by October 17, 1987. Providing a 30-day effective date would make this regulation, which implements those requirements, effective after October 17 and thus may cause serious confusion within the regulated

community over how to comply with statutory and regulatory reporting requirements. In addition, this final rule reduces the categories for reporting and establishes minimum thresholds, which relieves the impact of the statutory requirements otherwise effective on October 17, 1987. Finally, the other requirements implemented by this rule relate to section 312 reporting, which is not required until March 1, 1988. Thus, those requirements would not be affected by the 30-day effective date requirement under section 553(d) of the APA.

Because EPA believes that it thus has "good cause" to suspend the 30-day effective date requirement and this rule relieves reporting otherwise required by statute, the Agency has made this rule immediately effective in accordance with section 553(d) of the APA.

## VII. Regulatory Analyses

### *A. Regulatory Impact Analysis*

1. Purpose

Executive Order No. 12291 requires each federal agency to determine if a regulation is a "major" rule as defined by the Order and to prepare and consider a Regulatory Impact Analysis (RIA) in connection with each major rule. Because EPA has determined that the reporting requirements for hazardous chemicals in this rulemaking constitute a major rule under Executive Order No. 12291, the Agency has prepared an RIA to assess the economic impact on the final regulation on affected industry and State and local government entities. The following results are presented in detail in the analysis documented in *Regulatory Impact Analysis in Support of Final Rulemaking Under Sections 311 and 312 of the Superfund Amendments and Reauthorization Act of 1986*, which is available for review in the public docket for this rulemaking.

This rule was submitted to the Office of Management and Budget for review as required by E.O. No. 12291.

2. Methodology and Data Sources

EPA conducted an assessment of the costs, benefits, and economic impacts associated with the final rule and the primary regulatory alternatives. The regulation affects employers covered by some provisions of OSHA's hazard communication standard and three types of government entities—State emergency response commissions, local emergency planning committees, and fire departments. Both industry and government are required by sections 311 and 312 of SARA to undertake certain activities, and, thus, both types of entities incur costs to comply with these regulations.

Benefits for both industry and government may also arise in conjunction with compliance activities. In addition, industry, government, and other groups may, as a result of these regulations, undertake additional voluntary activities that generate benefits both for these groups as well as for the general community. The interrrelationships among the activities undertaken by these diverse groups, the provisions of Title III, and the potential consequences for health and the environment are complex. Thus, time constraints did not permit EPA to perform a quantitative evaluation of the benefits of these provisions; a qualitative discussion of the benefits is provided in the RIA.

Costs of complying with sections 311 and 312 of SARA are incurred by covered facilities, State emergency response commissions, local emergency planning committees, and fire departments. Total costs depend on the number of facilites reporting, the total number of MSDS, and the number of government entities receiving the data.

For the industry analysis, EPA analyzed the activities that each facility would have to undertake to comply with sections 311 and 312 and the unit costs associated with each activity. It was assumed that the cost incurred by a facility varied in different years depending on the regulatory alternative being considered, the size of the facility, and the number of chemicals at the facility. Total costs to industry, thus, depend on the number of facilities affected or reporting, the number of chemicals for which MSDS are maintained at these facilities, and the unit costs associated with each of the compliance activities.

OSHA's hazard communication standard (HCS) currently covers facilities in the manufacturing sector (Standard Industrial Classification (SIC) codes 20 through 39), although OSHA has recently expanded the HCS to the non-manufacturing sector, to be effective in May, 1988. The number of facilities in each two-digit manufacturing SIC code nationwide was obtained from the Bureau of the Census (County Business Patterns, U.S. Department of Commerce, 1984) for four facility sizes: (1) 1–19 employees, (2) 20–99 employees, (3) 100–249 employees, and (4) more than 249 employees. Based on census data, there are an estimated 350,740 manufacturing facilities that could potentially be affected by this rule.

The number of MSDS present, on average, at a facility in each SIC code and facility size class was provided by updating OSHA's 1980 estimates of the number of "regulated chemicals" (i.e., MSDS) in each SIC code and size class to 1986. The total number of MSDS maintained at all manufacturing facilities is estimated to be 35,004,503, which implies that an average facility maintains 100 MSDS. On average, the smallest facilities (those with 1–19 employees) are estimated to have 74 MSDS, and the largest facilities (more than 250 employees) have 306 MSDS.

The costs to industry of complying with each of the regulatory alternatives have been estimated as have the costs of complying with the default legislative requirements if EPA had promulgated no regulations. Five regulatory alternatives are identified for analysis in this report. The regulatory options differ from each other with regard to the threshold that is in effect in each year. Raising the threshold in a given year reduces industry costs in that year by reducing the number of chemicals that facilities report under both Sections 311 and 312 and by reducing the number of facilities that report.

Estimates of the numbers of covered facilities and reportable chemicals for each threshold level were obtained from a data set that was compiled as part of an industrial survey conducted by the State of New Jersey in 1979. To perform this analysis, the chemical reports in the New Jersey data set were weighted to make the mix of facilities by SIC code more representative of the mix of facilities nationwide. The effects of different thresholds on the numbers of facilities and chemicals covered were then calculated. The cost methodology assumed that the effect of thresholds on the percent of facilities or chemicals covered is unaffected by SIC code or the size of the facility. At 10,000 pounds, it is estimated that 22 percent of the facilities (78,000) will be required to report, and that 13 percent of the chemicals (4.5 million) will be reported. At 500 pounds, it is estimated that 82 percent of the facilities (288,000) and 57 percent of the chemicals (19.9 million) will be covered.

Similar weighting procedures were followed for data sets obtained from two other states, Michigan and New York. The data from these states did not contradict the New Jersey data; the latter were used in the analysis since they were more complete in several variables and also provided a more conservative view of the extent to which thresholds reduce costs.

In addition to differences in the reporting thresholds, the regulatory alternatives differ from the default statutory requirements in two respects. First, the statutory default for hazard categorization is the OSHA categories, which were defined as 23 categories of health and physical hazards for the proposed rule. EPA is promulgating five

hazard categories; performing hazard categorization should be less costly for industry than under the 23 OSHA categories. Second, EPA is publishing inventory forms for reporting; if no forms exist, the legislation requires that facilities submit section 312 information by letter. Both these factors reduce the estimated cost of the regulatory alternatives in comparison with the legislation.

The analysis of costs to government proceeded along lines similar to the industry analysis. The analysis estimated costs for a representative State commission, local committee, and fire department. It was assumed that the costs incurred by each entity in each year depended on the number of reports received, on the number of facilities reporting, and on the number of government entities. EPA assumed that there would be only one commission per State and estimated the number of local committees and fire departments.

Both the industry and government analyses assume that reporting and receiving entities undertake the minimum activities that they must perform to comply with SARA. The analysis, therefore, does not take into account the costs associated with voluntary activities, such as designing and using computer systems to store and access the data, alterations in chemical usage patterns that may arise at facilities as a result of these sections of SARA, or other activities or effects.

Several supplemental analyses were performed to provide evidence on the sensitivity of the results to changes in various assumptions of the methodology. In particular, present value total costs were computed (a) for two discount rates, 4% and 10%, (b) using an alternative set of results on the effects of thresholds, (c) for the 23 OSHA categories as well as the five categories in the rule, and (d) for the non-manufacturing facilities that will be covered by the OSHA expansion of the HCS.

An analysis of some of the costs potentially associated with requests is also presented. In particular, a sensitivity analysis of the aggregate cost to government of responding to requests for MSDS or Tier I information when the information is already in the files is included. The cost to a facility of responding to an individual request for MSDS or Tier I information is provided as is the cost to a government entity of requesting MSDS or Tier I information if it is not in the files. The cost to a facility of responding to Tier II requests, under alternative assumptions on the number of chemicals for which Tier II information is requested, is also provided.

3. Results

The RIA analyzes five regulatory alternatives as well as the statutory or default baseline. In addition, two alternative hazard categorization schemes are considered. The five threshold options considered are:

Alternative I: No threshold
Alternative II: (Proposed)
  10,000 pounds in year 1
  500 pounds in year 2
  No threshold in year 3 and subsequent years
Alternative III:
  10,000 pounds in year 1
  10,000 pounds in year 2
  500 pounds in year 3 and beyond
Alternative IV:
  10,000 pounds in year 1
  10,000 pounds in year 2
  50 pounds in year 3 and beyond
Alternative V:
  10,000 pounds in year 1
  10,000 pounds in year 2
  2,000 pounds in year 3 and beyond.

In present value (PV) terms, the cost of each of the regulatory alternatives is lower than the cost associated with the statutory requirements. Present value costs for each of these threshold alternatives were computed by discounting annual costs over the first ten years of reporting at ten percent. Assuming the five hazard categories promulgated in the final rule, the PV costs to industry for the five alternatives range between $520 million and just over $1 billion, in comparison with $1.6 billion for the statutory requirements (the baseline).

For government, present value costs range between $120 million and $260 million; the costs of the no-threshold option are the greatest and are identical with the costs of the baseline under the assumptions of the analysis. For both industry and government, Alternative V, which has the highest permanent threshold, has the lowest continuing costs and the lowest present value costs. Alternative I, the no-threshold option, has the highest costs. Alternative III, the preferred alternative for this rulemaking, is towards the low end: $708 million for industry and $178 million for government.

For Alternative III, first-year industry costs equal approximately $162 million, second-year costs drop to $24 million since the threshold is unchanged, third year costs rise to $348 million, since the reduction in the threshold requires many more facilities to report on additional chemicals. Costs level off at $59 million in the fourth and subsequent years. Costs for the other alternatives in the fourth and subsequent years range between $39 million and $66 million, depending on the threshold level in those years.

In the first year of reporting, all system set-up and design costs are attributed to section 311; thus, the costs to industry of complying with section 311 slightly outweight those associated with section 312 for all regulatory alternatives except Alternative I, the no-threshold option. For year three onward, section 312 costs outweigh section 311 costs; for Alternative III in year four, the costs associated with section 312 are approximately 64 percent of the combined costs to industry of sections 311 and 312.

In general, annual government costs for sections 311 and 312 combined are much smaller than those estimated for industry. This reflects the assumption in the analysis that many costs, such as rule familiarization and system design, are incurred by each individual facility or government entity and are not directly related to the number of forms being handled. First-year costs equal $43 million for all alternatives except the no-threshold option; second-year costs drop substantially; third-, fourth- (and subsequent) year costs level off at between $15 million and $32 million. Although costs to an individual State commission far exceed those to a local committee or fire department, there are many more fire departments than commissions or committees so that, in aggregate, costs to fire departments may account for as much as one-third to more than one-half of government costs in any given year.

The above costs do not reflect the costs of the regulatory alternatives if OSHA's 23 hazard categories had been used in the final rule. In present value terms, using the original 23 categories rather than five leads to a 28% to 38% increase in costs over 10 years, depending on the alternative.

Both industry and government will incur costs in conjunction with requests. SERCs, LEPCs and fire departments, as well as other government officials, may have access to the information reported under these sections and may request additional information. In addition, SERCs and LEPCs will, under certain circumstances, have to make available MSDS and inventory forms that they have received from facilities. They will also have to request information that either was not reported or that concerns chemicals below the threshold, and they will need to make determinations on, and possibly request, Tier II

information. Similarly, facilities will need to respond to requests by government. It is difficult to estimate the aggregate costs associated with requests, since the magnitude of these costs depends crucially on the behavior of the public and government and the types of programs that are set up on the threshold level in effect, and on the government's implementation of the Tier II provisions.

An estimate of the potential costs to government of responding to requests for MSDS was obtained assuming that requests for between five and 25 percent of facilities are received by government. If government agencies provide copies of all MSDS that a facility has submitted, estimated costs to government of handling these requests range between less than $400,000 to over $1.8 million.

The number of Tier II requests to which industry must respond will depend on the criteria used by local committees to evaluate public requests, the number of public requests made, the distribution of these requests across chemical volumes, and the number of requests originating with the government. It is thus difficult to estimate the aggregate costs associated with Tier II information; however, the costs to an individual facility of responding to a Tier II request may range between approximately $800 and $6,500, depending on the number of chemicals for which the request is received and the size of the facility.

Similarly, the number of requests that government will make to industry for MSDS stored below the threshold will depend on the number of requests that governments receive, which, in turn, depends on the size of the threshold and the outreach program and policies of government. Further, if facilities choose to submit lists, additional requests for MSDS will be generated.

No aggregate estimates of the costs of complying with requests below the threshold are presented. However, the cost to government of requesting all MSDS from a facility, photocopying, and mailing the information to the requester when the information is not on file is estimated to be $52 per request; the cost to industry of complying with the request is $31. Those activities and associated costs are intended to represent one reasonable method of making information available to the public and may not be used by all government entities.

The analysis also examined the effects of OSHA's expansion of its HCS on industry and government costs. This expansion may affect as many as 3.5 million non-manufacturing facilities with approximately 67 million MSDS. Very rough cost estimates suggest that, for the chosen alternative, present value costs to non-manufacturing facilities of complying with sections 311 and 312 combined may be as high as $3.7 billion; this is approximately five times the costs estimated for manufacturing. For government, incremental costs associated with the expansion are approximately $1.1 billion, which is over six times the costs associated with the current scope of the HCS.

Benefits arise in conjunction with several parts of the reporting requirements of this rule. Potential benefits arise in conjunction with this rule primarily because the information that is reported is used (e.g., more effective planning occurs, which reduces the probability of accidents or chronic exposures). Thus, the provisions of the regulation affect the benefits generated, in comparison with those generated by the statutory requirements, in several ways. First, the reporting thresholds affect the volume of information submitted. Reducing the number of submissions generates benefits if the information is more manageable. However, raising thresholds may reduce benefits if public access to complete information on chemical hazards in the community is reduced or impeded.

Second, simplifying the hazard classification system affects benefits. On the one hand, it promotes efficient use of the information; conversely, it reduces the level of detail available to the government and the public.

Benefits also raise in conjunction with two public access provisions that have been incorporated into the final rule: reporting on the list of EHS at 500 pounds or the TPQ and access by the public, on request, to information on chemicals stored below the threshold. Both these provisions provide benefits to communities with specific needs for complete information.

Finally, use of the published form by industry for Section 312 reporting may provide benefits. Consistently formatted information is easier to process, manage, and use and thus may encourage utilization of the information by the general public and government entities.

*B. Regulatory Flexibility Act*

1. Purpose

Under the Regulatory Flexibility Act, whenever an agency is required to issue any proposed or final rule for publication in the **Federal Register**, it must prepare and make available a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions), unless the agency's Administrator certifies that the rule will not have a significant impact on a substantial number of small entitles. The analyses contained in the RIA address the impact of this rule on small entities. Based on these analyses, EPA has concluded that, while the rule affects a substantial number of small entities, the impact on each is not significant.

2. Methodology and Results

To examine the impacts on small businesses, EPA compared average costs for small facilities (defined to be those with 1–19 employees) to average and median sales for those facilities, by two-digit SIC code.

There are a substantial number of small businesses under this definition; 225,423 facilities—64 percent of total manufacturing—are estimated to be small. All of these facilities must, at least, incur the cost of becoming familiar with the requirements of these Sections, and thus, incur some costs of complying with sections 311 and 312.

In order to assess the impacts on small businesses, several guidelines were used. The primary criterion, however, is the ratio of annual costs to average or median sales. A worst-case scenario is provided by examining the first year of Alternative I, no threshold. Average costs to industry for small businesses, by SIC code, range between $1,400 and $2,100. As a percentage of average sales, the range is .12 to .71 percent. The range as a percentage of median sales is narrower—.20 to .64 percent. This is well within EPA's guidelines that cost remain below 5 percentage of sales in order to avoid significant impacts.

However, EPA is concerned that it has been unable to provide a complete assessment of the impact of this rule on small businesses in all business sectors that will in the future become subject to these requirements due to OSHA's expanded hazard communication standard. As indicated earlier, EPA is understanding a more detailed review of the appropriateness of these thresholds in this rule as they apply to the expanded coverage of the OSHA MSDS requirements. EPA will also be conducting a further analysis of small businesses newly subject to OSHA and Title III requirements.

3. Certification

On the basis of the analyses contained in the RIA with respect to the impact of this rule on small entities, I hereby certify that this rule will not have a significant impact on a

substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis.

*C. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2050.0072.

**VIII. Submission of Reports**

If necessary to obtain reporting forms, facilities should contact their State emergency response commission. Although EPA intends to provide camera-ready copy of the federal form for use by the SERCs, the commission will be responsible for co-ordinating with the LEPCs and fire departments regarding the printing and distribution of the inventory forms.

To obtain the address of a SERC, an individual or facility should contact their Governor's office or the Chemical Emergency Preparedness Hotline at (800) 535-0202 or (202) 479-2449 (DC and Alaska). The SERC should be able to provide information concerning the LEPCs within the State.

**List of Subjects in 40 CFR Part 370**

Chemicals, Hazardous substances, Extremely hazardous substances, Intergovernmental relations, Community right-to-know, Superfund Amendments and Reauthorization Act, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Date: October 8, 1987.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the Preamble, Subchapter J of Title 40 of the Code of Federal Regulations is amended by adding Part 370 to read as follows:

## PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

**Subpart A—General Provisions**

Sec.
370.1 Purpose
370.2 Definitions
370.5 Penalties

**Subpart B—Reporting Requirements**

Sec.
370.20 Applicability
370.21 MSDS Reporting
370.25 Inventory Form Reporting
370.28 Mixtures

**Subpart C—Public Access and Availability of Information**

Sec.
370.30 Requests for Information
370.31 Provision of Information

**Subpart D—Inventory Forms**

Sec.
370.40 Tier I Emergency and Hazardous Chemical Inventory Form
370.41 Tier II Emergency and Hazardous Chemical Inventory Form

**Authority:** Secs. 311, 312, 324, 325, 328, 329 of Pub. L. 99-499, 100 Stat. 1613, 42 U.S.C. 11011, 11012, 11024, 11025, 11028, 11029.

### Subpart A—General Provisions

**§ 370.1 Purpose.**

These regulations establish reporting requirements which provide the public with important information on the hazardous chemicals in their communities for the purpose of enhancing community awareness of chemical hazards and facilitating development of State and local emergency response plans.

**§ 370.2 Definitions.**

"Commission" means the State emergency response commission, or the Governor if there is no commission, for the State in which the facility is located.

"Committee" means the local emergency planning committee for the emergency planning district in which the facility is located.

"Environment" includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

"Extremely hazardous substance" means a substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.

"Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

"Hazard Category" means any of the following:

(1) "Immediate (acute) health hazard," including "highly toxic," "toxic," "irritant," "sensitizer," "corrosive," (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of short term exposure and is of short duration;

(2) "Delayed (chronic) health hazard," including "carcinogens" (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long term exposure and is of long duration;

(3) "Fire hazard," including "flammable," combustible liquid," "pyrophoric," and "oxidizer" (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations);

(4) "Sudden release of pressure," including "explosive" and "compressed gas" (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations); and

(5) "Reactive," including "unstable reactive," "organic peroxide," and "water reactive" (as defined under § 1910.1200 of Title 29 of the Code of Federal Regulations).

"Hazardous chemical" means any hazardous chemical as defined under § 1910.1200(c) of Title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

"Inventory form" means the Tier I and Tier II emergency and hazardous chemical inventory forms set forth in Subpart D of this Part

"Material Safety Data Sheet" or "MSDS" means the sheet required to be developed under § 1910.1200(g) of Title 29 of the Code of Federal Regulations.

"Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of State, or interstate body.

"Present in the same form and concentration as a product packaged for

distribution and use by the general public" means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

"TPQ" means the threshold planning quantity for an extremely hazardous substance as defined in 40 CFR Part 355.

**§ 370.5 Penalties**

(a) *MSDA reporting.* Any person other than a governmental entity who violates any requirement of § 370.21 shall be liable for civil and administrative penalties of not more than $10,000 for each violation.

(b) *Inventory reporting.* Any person other than a governmental entity who violates any requirement of § 370.25 shall be liable for civil and administrative penalties of not more than $25,000 for each violation.

(c) *Continuing violations.* Each day a violation described in paragraphs (a) or (b) of this section continues shall constitute a separate violation.

## Subpart B—Reporting Requirements

**§ 370.20 Applicability.**

(a) *General.* The requirements of this subpart apply to any facility that is required to prepare or have available a material safety data sheet (or MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(b) *Minimum threshold levels.* Except as provided in paragraph (b)(3) of this section, the minimum threshold level for reporting under this subpart shall be according to the following schedule.

(1) The owner or operator of a facility subject to this Subpart shall submit an MSDS:

(i) On or before October 17, 1987 (or 3 months after the facility first becomes subject to this subpart), for all hazardous chemicals present at the facility in amounts equal to or greater than 10,000 pounds, or that are extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 55 gallons) or the TPQ, whichever is less, and

(ii) On or before October 17, 1989 (or 2 years and 3 months after the facility first becomes subject to this Subpart), for all hazardous chemicals present at the facility between 10,000 and zero pounds for which an MSDS has not yet been submitted.

(2) The owner or operator of a facility subject to this Subpart shall submit the Tier I form:

(i) On or before March 1, 1988 (or March 1 of the first year after the facility first becomes subject to this Subpart), covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than 10,000 pounds, or that are extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 55 gallons) or the TPQ, whichever is less, and

(ii) On or before March 1, 1989 (or March 1 of the second year after the facility first becomes subject to this Subpart), covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than 10,000 pounds, or that are extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 55 gallons) or the TPQ, whichever is less, and

(iii) On or before March 1990 (or March 1 of the third year after the facility first becomes subject to this Subpart), and annually thereafter, covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than zero pounds or that are extremely hazardous substances present at the facility in an amount equal to or greater than 500 pounds (or 55 gallons) or the TPQ, whichever is less.

(3) The minimum threshold for reporting in response to requests for submission of an MSDS or a Tier II form pursuant to §§ 370.21(d) and 370.25(c) of this Part shall be zero.

**§ 370.21 MSDS reporting.**

(a) *Basic requirement.* The owner or operator of a facility subject to this Subpart shall submit an MSDS for each hazardous chemical present at the facility according to the minimum threshold schedule provided in paragraph (b) of § 370.20 to the committee, the commission, and the fire department with jurisdiction over the facility.

(b) *Alternative reporting.* In lieu of the submission of an MSDS for each hazardous chemical under paragraph (a) of this section, the owner or operator may submit the following:

(1) a list of the hazardous chemicals for which the MSDS is required, grouped by hazard category as defined under § 370.2 of this Part;

(2) the chemical or common name of each hazardous chemical as provided on the MSDS; and

(3) except for reporting of mixtures under § 370.28(a)(2), any hazardous component of each hazardous chemical as provided on the MSDS.

(c) *Supplemental reporting.* (1) The owner or operator of a facility that has submitted an MSDS under this section shall provide a revised MSDS to the committee, the commission, and the fire department with jurisdiction over the facility within three months after discovery of significant new information concerning the hazardous chemical for which the MSDS was submitted.

(2) After October 17, 1987, the owner or operator of a facility subject to this section shall submit an MSDS for a hazardous chemical pursuant to paragraph (a) of this section or a list pursuant to paragraph (b) of this section within three months after the owner or operator is first required to prepare or have available the MSDS or after a hazardous chemical requiring an MSDS becomes present in an amount exceeding the threshold established in § 370.20(b).

(d) *Submission of MSDS upon request.* The owner or operator of a facility that has not submitted the MSDS for a hazardous chemical present at the facility shall submit the MSDS for any such hazardous chemical to the committee upon its request. The MSDS shall be submitted within 30 days of the receipt of such request.

**§ 370.25 Inventory reporting.**

(a) *Basic requirement.* The owner or operator of a facility subject to this Subpart shall submit an inventory form to the commission, the committee, and the fire department with jurisdiction over the facility. The inventory form containing Tier I information on hazardous chemicals present at the facility during the preceding calendar year above the threshold levels established in § 370.20(b) shall be submitted on or before March 1 of each year, beginning in 1988.

(b) *Alternative reporting.* With respect to any specific hazardous chemical at the facility, the owner or operator may submit a Tier II form in lieu of the Tier I information.

(c) *Submission of Tier II information.* The owner or operator of a facility subject to this Section shall submit the Tier II form to the commission, committee, or the fire department having

jurisdiction over the facility upon request of such persons. The Tier II form shall be submitted within 30 days of the receipt of each request.

(d) *Fire department inspection.* The owner or operator of a facility that has submitted an inventory form under this section shall allow on-site inspection by the fire department having jurisdiction over the facility upon request of the department, and shall provide to the department specific location information on hazardous chemicals at the facility.

**§ 370.28 Mixtures.**

(a) *Basic reporting.* The owner or operator of a facility may meet the reporting requirements of §§ 370.21 (MSDS reporting) and 370.25 (inventory form reporting) of this Subpart for a hazardous chemical that is a mixture of hazardous chemicals by:

(1) Providing the required information on each component in the mixture which is a hazardous chemical, or

(2) Providing the required information on the mixture itself, so long as the reporting of mixtures by a facility under § 370.21 is in the same manner as under § 370.25, where practicable.

(b) *Calculation of the quantity.* (1) if the reporting is on each component of the mixture which is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) shall be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture.

(2) If the reporting is on the mixture itself, the total quantity of the mixture shall be reported.

## Subpart C—Public Access and Availability of Information

**§ 370.30 Requests for information.**

(a) *Request for MSDS information.* (1) Any person may obtain an MSDS with respect to a specific facility by submitting a written request to the committee.

(2) If the committee does not have in its possession the MSDS requested in paragraph (a)(1) of this section, it shall request a submission of the MSDS from the owner or operator of the facility that is the subject of the request.

(b) *Requests for Tier II information.* (1) Any person may request Tier II information with respect to a specific facility by submitting a written request to the commission or committee in accordance with the requirements of this section.

(2) If the committee or commission does not have in its possession the Tier II information requested in paragraph (b)(1) of this section, it shall request a submission of the Tier II form from the owner or operator of the facility that is the subject of the request, provided that the request is from a State or local official acting in his or her official capacity or the request is limited to hazardous chemicals stored at the facility in an amount in excess of 10,000 pounds.

(3) If the request under paragraph (b)(1) of this section does not meet the requirements of paragraph (b)(2) of this section, the committee or commission may request submission of the Tier II form from the owner or operator of the facility that is the subject of the request if the request under paragraph (b)(1) of this section includes a general statement of need.

**§ 370.31 Provision of information.**

All information obtained from an owner or operator in response to a request under this subpart and any requested Tier II form or MSDS otherwise in possession of the commission or the committee shall be made available to the person submitting the request under this Subpart; provided upon request of the owner or operator, the commission or committee shall withhold from disclosure the location of any specific chemical identified in the Tier II form.

## Subpart D—Inventory Forms

**§ 370.40 Tier I emergency and hazardous chemical inventory form.**

(a) The form set out in paragraph (b) of this section shall be completed and submitted as required in § 370.25(a). In lieu of the form set out in paragraph (b) of this section, the facility owner or operator may submit a State or local form that contains identical content.

(b) Tier I Emergency and Hazardous Chemical Inventory Form.

BILLING CODE 6560-50-M

Page ____ of ____ pages
Form Approved OMB No. 2050-0072

# Tier One

## EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY

*Aggregate Information by Hazard Type*

FOR OFFICIAL USE ONLY
ID #
Date Received

*Important: Read instructions before completing form*

**Reporting Period** From January 1 to December 31, 19____

### Facility Identification

Name
Street Address
City ____ State ____ Zip ____
SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

### Owner/Operator

Name
Mail Address
Phone ( )

### Emergency Contacts

Name
Title
Phone ( )
24 Hour Phone ( )

Name
Title
Phone ( )
24 Hour Phone ( )

☐ Check if site plan is attached

### Physical Hazards

| Hazard Type | Max Amount* | Average Daily Amount* | Number of Days On-Site | General Location |
|---|---|---|---|---|
| Fire | ☐☐ | ☐☐ | ☐☐☐ | |
| Sudden Release of Pressure | ☐☐ | ☐☐ | ☐☐☐ | |
| Reactivity | ☐☐ | ☐☐ | ☐☐☐ | |

### Health Hazards

| | | | | |
|---|---|---|---|---|
| Immediate (acute) | ☐☐ | ☐☐ | ☐☐☐ | |
| Delayed (Chronic) | ☐☐ | ☐☐ | ☐☐☐ | |

### Certification *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete

Name and official title of owner/operator OR owner/operator's authorized representative

Signature ____ Date signed ____

| * Reporting Ranges | Range Value | Weight Range In Pounds From... | To... |
|---|---|---|---|
| | 00 | 0 | 99 |
| | 01 | 100 | 999 |
| | 02 | 1000 | 9,999 |
| | 03 | 10,000 | 99,999 |
| | 04 | 100,000 | 999,999 |
| | 05 | 1,000,000 | 9,999,999 |
| | 06 | 10,000,000 | 49,999,999 |
| | 07 | 50,000,000 | 99,999,999 |
| | 08 | 100,000,000 | 499,999,999 |
| | 09 | 500,000,000 | 999,999,999 |
| | 10 | 1 billion | higher than 1 billion |

# TIER ONE INSTRUCTIONS

## GENERAL INFORMATION

**Submission of this form is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312, Public Law 99-499.**

The purpose of this form is to provide State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the past year.

YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM.

You may substitute the Tier Two form for this Tier One form. (The Tier Two form provides detailed information and must be submitted in response to a specific request from State or local officials.)

### WHO MUST SUBMIT THIS FORM

Section 312 of Title III requires that the owner or operator of a facility submit this form if, under regulations implementing the Occupational Safety and Health Act of 1970, the owner or operator is required to prepare or have available Material Safety Data Sheets (MSDS) for hazardous chemicals present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at §1910.1200.

### WHAT CHEMICALS ARE INCLUDED

You must report the information required on this form for every hazardous chemical for which you are required to prepare or have available an MSDS under the Hazard Communication Standard. However, OSHA regulations and Title III exempt some chemicals from reporting.

Section 1910.1200(b) of the OSHA regulations currently provides the following exemptions:

(i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.) when subject to regulations issued under that Act;

(ii) Tobacco or tobacco products;

(iii) Wood or wood products;

(iv) "Articles"- defined under §1910.1200 (b) as a manufactured item;

- Which is formed to a specific shape or design during manufacture;
- Which has end use function(s) dependent in whole or in part upon the shape or design during end use; and
- Which does not release, or otherwise result in exposure to a hazardous chemical under normal conditions of use.

(v) Food, drugs, cosmetics or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

(vi) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

(vii) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 1251 *et seq.*) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers; and

(viii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), when it is in solid, final form for direct administration to the patient (i.e., tablets or pills).

In addition, Section 311(e) of Title III excludes the following substances:

(i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(ii) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(iii) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(v) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Also, minimum reporting thresholds have been established under Title III, Section 312. You need to report only those hazardous chemicals that were present at your facility at any time during the preceding calendar year at or above the levels listed below:

- January to December 1987 (or first year of reporting) ...10,000 lbs.
- January to December 1988 (or second year of reporting) ...10,000 lbs.
- January to December 1989 (or third year of reporting) ...zero lbs.*
  - * EPA will publish the final threshold, effective in the third year, after additional analysis.
- For extremely hazardous substances...500 lbs. or the threshold planning quantity, whichever is less, from the first year of reporting and thereafter.

### WHEN TO SUBMIT THIS FORM

Beginning March 1, 1988, owners or operators must submit the Tier One form (or substitute the Tier Two form) on or before March 1 of every year.

## INSTRUCTIONS

*Please read these instructions carefully. Print or type all responses.*

### WHERE TO SUBMIT THIS FORM

Send one completed inventory form to each of the following organizations:

1. Your State emergency planning commission
2. Your local emergency planning committee
3. The fire department with jurisdiction over your facility.

### PENALTIES

Any owner or operator of a facility who fails to submit or supplies false Tier One information shall be liable to the United States for a civil penalty of up to $25,000 for each such violation. Each day a violation continues shall constitute a separate violation. In addition, any citizen may commence a civil action on his or her own behalf against any owner or operator who fails to submit Tier One information.

You may use the Tier Two form as a worksheet for completing Tier One. Filling in the Tier Two chemical information section should help you assemble your Tier One responses.

If your responses require more than one page, fill in the page number at the top of the form.

### REPORTING PERIOD

Enter the appropriate calendar year, beginning January 1 and ending December 31.

### FACILITY IDENTIFICATION

Enter the complete name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the state or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

### OWNER/OPERATOR

Enter the owner's or operator's full name, mailing address, and phone number.

### EMERGENCY CONTACT

Enter the name, title, and work phone number of at least one local person or office that can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day.

### PHYSICAL AND HEALTH HAZARDS

**Descriptions, Amounts, and Locations**

This section requires aggregate information on chemicals by hazard categories as defined in 40 CFR 370.3. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200. For each hazard type, indicate the total amounts and general locations of all applicable chemicals present at your facility during the past year.

- What units should I use?

  Calculate all amounts as *weight in pounds*. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

  If a chemical is part of a mixture, *you have the option* of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous solution weighs 100 lbs. but is composed of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture or 5 lbs. of the chemical).

  Select the option consistent with your Section 311 reporting of the chemical on the MSDS or list of MSDS chemicals.

- Where do I count a chemical that is a fire reactivity physical hazard and an immediate (acute) health hazard?

  Add the chemical's weight to your totals for all three hazard categories and include its location in all three categories. Many chemicals fall into more than one hazard category, which results in double-counting.

### MAXIMUM AMOUNT

The amounts of chemicals you have on hand may vary throughout the year. The peak weights -- greatest single-day weights during the year -- are added together in this column to determine the maximum weight for each hazard type. Since the peaks for different chemicals often occur on different days, this maximum amount will seem artificially high

To complete this and the following sections, you may choose to use the Tier Two form as a worksheet.

To determine the Maximum Amount:

1. List all of your hazardous chemicals individually.
2. For each chemical...
   a. Indicate all physical and health hazards that the chemical presents. Include all chemicals, even if they are present for only a short period of time during the year.

b. Estimate the maximum weight in pounds that was present at your facility on any single day of the reporting period.

3. For each hazard type -- beginning with Fire and repeating for all physical and health hazard types...
   a. Add the maximum weights of all chemicals you indicated as the particular hazard type.
   b. Look at the Reporting Ranges at the bottom of the Tier One form. Find the appropriate range value code.
   c. Enter this range value as the Maximum Amount.

EXAMPLE:

You are using the Tier Two form as a worksheet and have listed raw weights in pounds for each of your hazardous chemicals. You have marked an X in the Immediate (acute) hazard column for phenol and sulfuric acid. The maximum amount raw weight you listed were 10,000 lbs. and 50 lbs. respectively. You add these together to reach a total of 10,050 lbs. Then you look at the Reporting Range at the bottom of your Tier One form and find that the value of 03 corresponds to 10,050 lbs. Enter 03 as your Maximum Amount for Immediate (acute) hazards materials.

You also marked an X in the Fire hazard box for phenol. When you calculate your Maximum Amount totals for fire hazards, add the 10,000 lb. weight again.

AVERAGE DAILY AMOUNT

This column should represent the average daily amount of chemicals *of each hazard type* that were present at your facility at any point during the year.

To determine this amount:

1. List all of your hazardous chemicals individually (same as for Maximum Amount).
2. For each chemical...
   a. Indicate all physical and health hazards that the chemical presents (same as for Maximum Amount).
   b. Estimate the average weight in pounds that was present at your facility throughout the year. To do this, total all daily weights and divide by the number of days the chemical was present on the site.
3. For each hazard type -- beginning with Fire and repeating for all physical and health hazards...
   a. Add the average weights of all chemicals you indicated for the particular hazard type.
   b. Look at the Reporting Ranges at the bottom of the Tier One form. Find the appropriate range value code.
   c. Enter this range value as the Average Daily Amount.

EXAMPLE:

You are using the Tier Two form, and have marked an X in the Immediate (acute) hazard column for nicotine and phenol. Nicotine is present at your facility 100 days during the year, and the sum of the daily weights is 100,000 lbs. By dividing 100,000 lbs. by 100 days on-site, you calculate an Average Daily Amount of 1,000 lbs. for nicotine. Phenol is present at your facility 50 days during the year, and the sum of the daily weights is 10,000 lbs. By dividing 10,000 lbs. by 50 days on-site, you calculate an Average Daily Amount of 200 lbs. for phenol. You then add the two average daily amounts together to reach a total of 1,200 lbs. Then you look at the Reporting Range on your Tier One form and find that the value 02 corresponds to 1,200 lbs. Enter 02 as your Average Daily Amount for Immediate (acute) Hazard.

You also marked an X in the Fire hazard column for phenol. When you calculate your Average Daily Amount for fire hazards, use the 200 lb. weight again.

NUMBER OF DAYS ON-SITE

Enter the greatest number of days that a single chemical within that hazard category was present on-site.

EXAMPLE:

At your facility, nicotine is present for 100 days and phosgene is present for 150 days. Enter 150 in the space provided.

GENERAL LOCATION

Enter the general location within your facility where each hazard may be found. General locations should include the names or identifications of buildings, tank fields, lots, sheds, or other such areas.

For each hazard type, list the locations of all applicable chemicals. As an alternative you may also attach a site plan and list the site coordinates related to the appropriate locations. If you do so, check the Site Plan box.

EXAMPLE:

On your worksheet you have marked an X in the Fire hazard column for acetone and butane. You noted that these are kept in steel drums in Room C of the Main Building, and in pressurized cylinders in Storage Shed 13, respectively. You could enter Main Building and Storage Shed 13 as the General Locations of your fire hazards. However, you choose to attach a site plan and list coordinates. Check the Site Plan box at the top of the column and enter site coordinates for the Main Building and Storage Shed 13 under General Locations.

If you need more space to list locations, attach an additional Tier One form and continue your list on the proper line. Number all pages.

CERTIFICATION

This must be completed by the owner or operator or the officially designated representative of the owner or operator. Enter your full name and official title. Sign your name and enter the current date.

**§ 370.41 Tier II emergency and hazardous chemical inventory form.**

(a) The form set out in paragraph (b) of this Section must be completed and submitted as required in § 370.25(c). In lieu of the form set out in paragraph (b) of this section, the facility owner or operator may submit a State or local form that contains identical content.

(b) Tier II Emergency and Hazardous Chemical Inventory Form.

BILLING CODE 6560-50-M

# Tier Two
## EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY

*Specific Information by Chemical*

**Facility Identification**

Name _____
Street Address _____
City _____ State _____ Zip _____

SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

FOR OFFICIAL USE ONLY
ID # _____
Date Received _____

**Owner/Operator Name**

Name _____ Phone ( ) _____
Mail Address _____

**Emergency Contact**

Name _____ Title _____
Phone ( ) _____ 24 Hr. Phone ( ) _____

Name _____ Title _____
Phone ( ) _____ 24 Hr. Phone ( ) _____

*Important: Read all instructions before completing form*

**Reporting Period** From January 1 to December 31, 19____

| Chemical Description | Physical and Health Hazards (check all that apply) | Inventory: Max. Daily Amount (code) | Inventory: Avg. Daily Amount (code) | Inventory: No. of Days On-site (days) | Storage Codes and Locations (Non-Confidential): Storage Code | Storage Locations |
|---|---|---|---|---|---|---|
| CAS ☐☐☐☐☐☐☐☐☐ Trade Secret ☐<br>Chem. Name _____<br>_____<br>*Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas | ☐ Fire<br>☐ Sudden Release of Pressure<br>☐ Reactivity<br>☐ Immediate (acute)<br>☐ Delayed (chronic) | ☐☐ | ☐☐ | ☐☐☐ | ☐☐☐ | _____ |
| CAS ☐☐☐☐☐☐☐☐☐ Trade Secret ☐<br>Chem. Name _____<br>_____<br>*Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas | ☐ Fire<br>☐ Sudden Release of Pressure<br>☐ Reactivity<br>☐ Immediate (acute)<br>☐ Delayed (chronic) | ☐☐ | ☐☐ | ☐☐☐ | ☐☐☐ | _____ |
| CAS ☐☐☐☐☐☐☐☐☐ Trade Secret ☐<br>Chem. Name _____<br>_____<br>*Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas | ☐ Fire<br>☐ Sudden Release of Pressure<br>☐ Reactivity<br>☐ Immediate (acute)<br>☐ Delayed (chronic) | ☐☐ | ☐☐ | ☐☐☐ | ☐☐☐ | _____ |

**Certification** *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner/operator OR owner/operator's authorized representative _____ Signature _____ Date signed _____

**Optional Attachments** *(Check one)*

☐ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations

Page ____ of ____ pages
Form Approved OMB No. 2050-0072

**Tier Two**
**EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY**
*Specific Information by Chemical*

**Facility Identification**

Name _____
Street Address _____
City _____ State ____ Zip ____

SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

FOR OFFICIAL USE ONLY
ID # _____
Date Received _____

**Owner/Operator Name**

Name _____ Phone ( ) _____
Mail Address _____

**Emergency Contact**

Name _____ Title _____
Phone ( ) _____ 24 Hr. Phone ( ) _____

Name _____ Title _____
Phone ( ) _____ 24 Hr. Phone ( ) _____

*Important: Read all instructions before completing form*

**Reporting Period** From January 1 to December 31, 19____

# Confidential Location Information Sheet

## Storage Codes and Locations (Confidential)

*Storage Codes* *Storage Locations*

CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name

☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____

CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name

☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____

CAS # ☐☐☐☐☐☐-☐☐-☐ Chem. Name

☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____
☐☐☐ _____

**Certification** *(Read and sign after completing all sections)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner/operator OR owner/operator's authorized representative _____ Signature _____ Date signed _____

**Optional Attachments** *(Check one)*

☐ I have attached a site plan
☐ I have attached a list of site coordinate abbreviations

# TIER TWO INSTRUCTIONS

## GENERAL INFORMATION

**Submission of this Tier Two form (when requested) is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312, Public Law 99-499. The purpose of this Tier Two form is to provide State and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.**

### YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM TO FULFILL TIER TWO REPORTING REQUIREMENTS.

This form may also be used as a worksheet for completing the Tier One form or may be submitted in place of the Tier One form.

### WHO MUST SUBMIT THIS FORM

Section 312 of Title III requires that the owner or operator of a facility submit this Tier Two form if so requested by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility.

This request may apply to the owner or operator of any facility that is required, under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communications Standard, found in Title 29 of the Code of Federal Regulations at §1910.1200.

### WHAT CHEMICALS ARE INCLUDED

You must report the information required on this form for each hazardous chemical for which Tier Two information is requested. However, OSHA regulations and Title III exempt some chemicals from reporting.

Section 1910.1200(b) of the OSHA regulations currently provides the following exemptions:

(i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act as amended (42 U.S.C. 6901 et seq.) when subject to regulations issued under that Act;

(ii) Tobacco or tobacco products;

(iii) Wood or wood products;

(iv) "Articles" – defined under §1910.1200(b) as a manufactured item:

- Which is formed to a specific shape or design during manufacture;
- Which has end use function(s) dependent in whole or in part upon the shape or design during end use; and
- Which does not release, or otherwise result in exposure to a hazardous chemical under normal conditions of use.

(v) Food, drugs, cosmetics or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

(vi) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace.

(vii) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 1251 *et seq.*) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers

(viii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), when it is in solid, final form for direct administration to the patient (i.e., tablets or pills).

In addition, Section 311(e) of Title III excludes the following substances:

(i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

(ii) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(iii) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;

(v) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Also, minimum reporting thresholds have been established for Tier One under Title III, Section 312. You need to report only those hazardous chemicals that were present at your facility at any time during the preceding calendar year at or above the levels listed below:

- January to December 1987 (or first year of reporting) ...10,000 lbs.
- January to December 1988 (or second year of reporting) ...10,000 lbs.
- January to December 1989 (or third year of reporting) ...zero lbs.*

  * EPA will publish the final threshold, effective in the third year, after additional analysis.

- For extremely hazardous substances...500 lbs. or the threshold planning quantity, whichever is less, from the first year of reporting and thereafter.

A requesting official may limit the responses required under Tier Two by specifying particular chemicals or groups of chemicals. Such requests apply to hazardous chemicals regardless of established thresholds.

## INSTRUCTIONS

*Please read these instructions carefully. Print or type all responses.*

### WHEN TO SUBMIT THIS FORM

Owners or operators must submit the Tier Two form to the requesting agency within 30 days of receipt of a written request from an authorized official.

### WHERE TO SUBMIT THIS FORM

Send the completed Tier Two form to the requesting agency.

### PENALTIES

Any owner or operator who violates any Tier Two reporting requirements shall be liable to the United States for a civil penalty of up to $25,000 for each such violation. Each day a violation continues shall constitute a separate violation.

You may use the Tier Two form as a worksheet for completing the Tier One form. Filling in the Tier Two Chemical Information section should help you assemble your Tier One responses.

If your responses require more than one page, fill in the page number at the top of the form.

### REPORTING PERIOD

Enter the appropriate calendar year, beginning January 1 and ending December 31.

### FACILITY IDENTIFICATION

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the state or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

### OWNER/OPERATOR

Enter the owner's or operator's full name, mailing address, and phone number.

### EMERGENCY CONTACT

Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency chemical information will be available 24 hours a day, every day.

### CHEMICAL INFORMATION: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

- What units should I use?

  Calculate all amounts as *weight in pounds*. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

  If a chemical is part of a mixture, *you have the option* of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous solution weighs 100 lbs. but is composed of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture *or* 5 lbs. of the chemical.

  Select the option consistent with your Section 311 reporting of the chemical on the MSDS or list of MSDS chemicals.

### CHEMICAL DESCRIPTION

1. Enter the Chemical Abstract Service number (CAS#).

   For mixtures, enter the CAS number of the mixture as a whole if it has been assigned a number distinct from its components. For a mixture that has no CAS number, leave this item blank or report the CAS numbers of as many constituent chemicals as possible.

   If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic chemical class (e.g., list toluene disocynate as organic isocynate) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to Section 322 of Title III for detailed information on how to comply with trade secret requests.

2. Enter the chemical name or common name of each hazardous chemical.
3. Circle *ALL* applicable descriptors: pure or mixture, *and* solid, liquid, or gas.

**EXAMPLE:**

You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS#. Then you circle "pure" *and* "mix" -- as well as "liq" *and* "gas".

### PHYSICAL AND HEALTH HAZARDS

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.3. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

### MAXIMUM AMOUNT

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.
2. Find the appropriate range value code in Table I.
3. Enter this range value as the Maximum Amount.

**Table I** REPORTING RANGES

| Range Value | Weight Range in Pounds From... | To... |
|---|---|---|
| 00 | 0 | 99 |
| 01 | 100 | 999 |
| 02 | 1,000 | 9,999 |
| 03 | 10,000 | 99,999 |
| 04 | 100,000 | 999,999 |
| 05 | 1,000,000 | 9,999,999 |
| 06 | 10,000,000 | 49,999,999 |
| 07 | 50,000,000 | 99,999,999 |
| 08 | 100,000,000 | 499,999,999 |
| 09 | 500,000,000 | 999,999,999 |
| 10 | 1 billion | higher than 1 billion |

If you are using this form as a worksheet for completing Tier One, enter the actual weight in pounds in the shaded space below the response blocks. Do this for both Maximum Amount and Average Daily Amount.

EXAMPLE:

You received one large shipment of a solvent mixture last year. The shipment filled your 5,000-gallon storage tank. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 5,000 gallons is 500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 500 by 7.29 to get a weight of 3,645 pounds.

Then you look at Table I and find that the range value 02 corresponds to 3,645. You enter 02 as the Maximum Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 3,645 in the shaded area.)

### AVERAGE DAILY AMOUNT

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

   To do this, total all daily weights and divide by the number of days the chemical was present on the site.
2. Find the appropriate range value in Table I.
3. Enter this range value as the Average Daily Amount.

EXAMPLE:

The 5,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 929,250 gallons. By dividing 929,250 gallons by 315 days on-site, you calculate an average daily amount of 2,950 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 2,950 is 295, you figure that you had an average of 295 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 295 by 7.29 to get a weight of 2,150 pounds.

Then you look at Table I and find that the range value 02 correponds to 2,150. You enter 02 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 2,150 in the shaded area.)

### NUMBER OF DAYS ON-SITE

Enter the number of days that the hazardous chemical was found on-site.

EXAMPLE:

The solvent composed of 10% benzene was present for 315 days at your facility. Enter 315 in the space provided.

### STORAGE CODES AND STORAGE LOCATIONS

List all non-confidential chemical locations in this column, along with storage types/conditions associated with each location.

**Storage Codes:** Indicate the types and conditions of storage present.

a. *Look at Table II.* For each location, find the appropriate storage type(s). Enter the corresponding code(s) in front of the parentheses.

b. *Look at Table III.* For each storage type, find the temperature and pressure conditions. Enter the applicable pressure code in the first space within the parentheses. Enter the applicable temperature code in the last space within the parentheses.

**Table II – STORAGE TYPES**

| CODES | Types of Storage |
|---|---|
| A | Above ground tank |
| B | Below ground tank |
| C | Tank inside building |
| D | Steel drum |
| E | Plastic or non-metallic drum |
| F | Can |
| G | Carboy |
| H | Silo |
| I | Fiber drum |
| J | Bag |
| K | Box |
| L | Cylinder |
| M | Glass bottles or jugs |
| N | Plastic bottles or jugs |
| O | Tote bin |
| P | Tank wagon |
| Q | Rail car |
| R | Other |

**Table III – TEMPERATURE AND PRESSURE CONDITIONS**

| CODES | Storage Conditions |
|---|---|
| | (PRESSURE) |
| 1 | Ambient pressure |
| 2 | Greater than ambient pressure |
| 3 | Less than ambient pressure |
| | (TEMPERATURE) |
| 4 | Ambient temperature |
| 5 | Greater than ambient temperature |
| 6 | Less than ambient temperature but not cryogenic |
| 7 | Cryogenic conditions |

EXAMPLE:

The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C(1,6)

**Storage Locations:**

Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional attachments: If you choose to attach *one* of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

a. *A site plan* with site coordinates indicated for buildings, lots, areas, etc. throughout your facility.

b. *A list of site coordinate abbreviations* that correspond to buildings, lots, areas, etc. throughout your facility.

EXAMPLE:

You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G-2, tank field 10 = B-6. Fill in the Storage Location as follows:

B-6 [ Tank 2 ] G-2 [Main Room]

Under Title III, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public. If you choose to do so:

- Enter the word "confidential" in the Non-Confidential Location section of the Tier Two form.
- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS# of each chemical for which you are keeping the location confidential.
- Enter the appropriate location and storage information, as described above for non-confidential locations.
- Attach the Tier Two Confidential Location Information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

**CERTIFICATION.**

This must be completed by the owner or operator or the officially designated representative of the owner or operator. Enter your full name and official title. Sign your name and enter the current date.

federal register

Thursday
October 15, 1987

Part V

# Department of Housing and Urban Development

## Office of the Assistant Secretary for Housing—Federal Housing Commissioner

## Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Notice of Fund Availability

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**[Docket No. N-87-1743; FR-2390]**

# Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Fund Availability

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

**ACTION:** Notice of fund availability.

**SUMMARY:** The purpose of the section 8 Moderate Rehabilitation Program for Single Room Occupany (SRO) Dwellings for Homeless Individuals is to provide rental assistance for homeless individuals in rehabilitated SRO housing. This program is authorized by section 441 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987). Under this program, HUD will fund applications from public housing agencies (PHAs) which best demonstrate a need for the assistance and the ability to undertake and carry out the program. HUD will conduct a national competition to select PHAs to participate.

The assistance will be in the form of rental assistance under the section 8 Housing Assistance Payments Program. These payments equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under the U.S. Housing Act of 1937. HUD will make the assistance available for 10 years. This Notice informs the public of the requirements that will govern the use of the $35 million appropriated for the program by the Supplemental Appropriations Act, 1987 (Pub L. 100–71, approved July 11, 1987). HUD estimates that this $35 million will assist between 600 and 800 units over the 10-year period.

**EFFECTIVE DATE:** October 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5720. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

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### I. Background

*A. Legislative Authority*

On July 22, 1987, the President signed into law the Stewart B. McKinney Homeless Assistance Act (the "McKinney Act"), Pub. L. 100–77. Title IV of the McKinney Act contains a number of housing assistance provisions for HUD to administer. This Notice implements section 441, which authorizes the section 8 Moderate Rehabilitation Assistance Program for Single Room Occupancy Dwellings for Homeless Individuals.

*B. Summary*

Under this program, HUD will enter into annual contributions contracts (ACCs) with public housing agencies (PHAs) in connection with the moderate rehabilitation of residential properties in which some or all of the dwelling units do not contain either food preparation or sanitary facilities. Each of these SRO units is intended for occupancy by one eligible homeless individual. Selection of tenants is not subject to the 15 and 30 percent limitations on the number of units that may be occupied by "other single persons" or to the preference for elderly, handicapped, or displaced single persons over other single persons (see section 3(b)(3) of the 91937 Act and the waiver of these provisions in section VIII.B. of this Notice). If, after appropriate outreach efforts by the PHA and the Owner, there are insufficient eligible homeless individuals to fill all assisted units, the Owner may rent them to eligible non-homeless individuals.

Section 441 requires that the amounts made available be allocated by HUD on the basis of a national competition to the applicants that best demonstrate a need for the assistance and the ability to undertake and carry out a program to be assisted under that section. No single city or urban county is eligible to receive more than 10 percent of the assistance made available (which is $350,000 in contract authority for each year over the 10-year assistance period).

Under this program, the PHAs must submit applications to HUD by November 16, 1987 if they wish to participate in the national competition. Applications will contain an inventory of suitable housing stock available and appropriate for rehabilitation under this program or, if possible, identification of the particular projects proposed for rehabilitation. HUD is not requiring competitive selection of Owners by PHAs because of the special nature of this program. Selected PHAs will execute an ACC with HUD, which will give HUD the option to renew the ACC for an additional 10 years, subject to the availability of appropriations. Before the Owner begins any rehabilitation, but no later than January 4, 1988, the PHA and the Owner must enter into an Agreement to Enter into Housing Assistance Payments Contract (Agreement). After completion of rehabilitation, which must be within six months of execution of the Agreement, the PHA and the Owner will enter into a Housing Assistance Payments (HAP) Contract with a 10-year term. (The

Contract term for the regular Moderate Rehabilitation program is 15 years.)

The total cost of rehabilitation that may be compensated through Contract Rents under a HAP Contract in this program may not exceed $14,000 per SRO unit (including a pro rata share of the cost related to common areas). This limit may be adjusted in certain circumstances. (There is no limitation on the cost of rehabilitation under the regular program.)

This Notice incorporates by reference many of the regulations for the current Moderate Rehabilitation Program in 24 CFR Part 882, Subparts D and E, and refers to other regulations in Title 24. Section references to HUD regulations are to Title 24. The term "family" as used in Title 24 shall be understood to refer to an individual for purposes of this program.

*C. Expedited Processing*

HUD has set extremely short deadlines for the various processing stages under this program, in an effort to make housing under this program available for the homeless as soon as possible. The Department anticipates that only those PHAs which have already identified specific projects are likely to be able to react quickly enough to submit applications by November 16, 1987, and execute an Agreement by January 4, 1988. We believe this expedited approach is consistent with the Congressional findings in section 102 of the McKinney Act. Among the findings are that "the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families" and that "the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless." HUD, PHAs, Owners, local governments, and other entities are called on by this Notice to make extraordinary efforts to respond to the need to house homeless individuals. If insufficient approval applications are submitted in response to this Notice to use all available funds or if additional funding is appropriated for the program, HUD will issue revised instructions. The Department anticipates that these instructions would give PHAs a longer time to develop applications, thereby permitting more PHAs to compete for funding.

**II. Project Eligibility and Other Requirements**

*A. Eligible and Ineligible Properties*

(1) Except as provided in paragraphs (2) through (5) of this paragraph A., housing suitable for moderate rehabilitation, as defined in § 882.402, is eligible for inclusion under this program. Existing structures of various types may be appropriate for this program, including single family houses and multifamily structures.

(2) Housing is not eligible for assistance under this program if it:

(a) Is, or has been within 12 months before the Owner submits a proposal to the PHA, subsidized under any Federal housing program, including the Certificate or Housing Voucher program;

(b) Is owned either by the PHA administering the ACC under this program or an entity controlled by that PHA;

(c) Is a project with a HUD-held mortgage or is a HUD-owned project;

(d) Is assisted, or for which a commitment for assistance has been entered into, under the Rental Rehabilitation program, 24 CFR Part 511; or

(e) Would require displacement (involuntary permanent move) of residential tenants or owner-occupants. HUD will not provide assistance under this program the effect of which would be to cause any individual or family permanently to move from real property (or to move its personal property from real property) because of actual or pending acquisition or rehabilitation of real property, in whole or in part, for a project.

(3) Nursing homes; units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions; and facilities providing continual psychiatric, medical, or nursing services are not eligible for assistance under this program.

(4) No section 8 assistance may be provided with respect to any unit occupied by an Owner.

*B. Housing Quality Standards*

Section 882.04 (including its incorporation by reference of § 882.109) shall apply to this program, except as follows:

(1) The housing quality standards in §§ 882.109(i) and 882.404(c), concerning lead-based paint, shall not apply to this program, since these SRO units will not house children under seven years of age.

(2) In addition to the performance requirements contained in § 882.109(p) concerning SRO units, a sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require shall be installed in each building.

(3) Section 882.109(q), concerning shared housing, shall not apply to this program.

(4) Section 882.404(b) concerning site and neighborhood standards, shall not apply to this program, except that § 882.404(b) (1) and (2) shall apply. In addition, the site shall be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.

*C. Financing*

Section 882.405 shall apply to this program.

*D. Temporary Relocation*

(1) *Applicability of Uniform Act. Section 882.406(a) shall apply to this program.*

(2) *Displacement Not Subject to the Uniform Act.* The following policies apply to temporary relocation of tenants which is not subject to the requirements of the Uniform Act. The policies apply only to lawful residential tenants (not owner-occupants or businesses) who are temporarily relocated following the date the PHA submits its application to HUD. The following policies do not apply to tenants who commence occupancy after that date if they are provided adequate notice from the Owner of the impending rehabilitation and possible relocation, or whose tenancy is terminated for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; or other good cause. (Good cause does not include terminations because of Owner participation in this program.)

(a) Tenants will not be required to move temporarily from the property (building or complex) unless: (i) Tenants have received adequate, advance written notice and appropriate advisory services, (ii) suitable temporary housing is available, (iii) the temporary relocation period will not exceed six months, and (iv) tenants will receive reimbursement for reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from temporary housing and increases in monthly housing costs.

(b) The PHA is responsible for assuring that all the relocation requirements are met. Reasonable relocation costs incurred by the Owner for the temporary relocation of tenants to be assisted under this program are considered eligible rehabilitation costs for inclusion in the Contract Rents.

(Temporary relocation costs for tenants not to be assisted under this program may not be included in the Contract Rents.) Preliminary administrative funds may be used for costs of PHA advisory services for temporary relocation of tenants to be assisted under this program.

(c) Tenants who believe they have not received relocation opportunities, services, or payments in accordance with this section may appeal to the PHA and shall be given an informal hearing on the appeal.

*E. Other Federal Requirements*

Section 882.407, Other Federal Requirements, shall apply to this program. In addition—

(1) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy, shall apply. Consistent with HUD's responsibilities under these Executive Orders and Executive Order 11625 (see § 882.407(c)(5)), the PHA and Owner shall make efforts to encourage the use of minority and women's business enterprises in connection with activities assisted under this program.

(2) If the procedures that PHA or Owner, as appropriate, intends to use to make known the availability of this program are unlikely to reach persons of any particular race, color, religion, sex, age, or national origin who may qualify for admission to the program, the PHA or Owner shall establish additional procedures that will ensure that these persons are made aware of the availability of this program. The PHA or Owner shall also adopt and implement procedures to ensure that interested persons can obtain information concerning the existence and location of services and facilities which are accessible to handicapped persons.

(3) Notwithstanding the permissibility of projects that serve designated populations of homeless persons, the PHA or Owner, as appropriate, is required, in serving the designated population, to comply with the requirements under this paragraph E, for nondiscrimination on the basis of race, color, religion, sex, age, and national origin. In addition, the PHA shall comply with section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against otherwise qualified individuals with handicaps solely by reason of handicap. Designated populations of homeless persons may include (but are not limited to) substance abusers and the chronically mentally ill.

(4) In selecting among proposals, the PHA shall also take into consideration compliance with the Coastal Barriers Resources Act (which prohibits assistance for sites identified under that Act).

**III. PHA Application Process, HUD Review and Selection, ACC Execution, and Pre-Rehabilitation Activities**

*A. General*

(1) PHAs that are currently administering a Moderate Rehabilitation Program under 24 CFR Part 882 are invited to submit applications for this program. There is no application form. Applications shall contain the information prescribed in paragraph C., be addressed to Lawrence Goldberger in Room 6130 at the address specified above, and be received by 5:15 p.m. on November 16, 1987. Each PHA shall also submit a copy of the application to the appropriate HUD field office by the same deadline. HUD will reject late applications.

(2) PHAs have discretion to select proposals by Owners in accordance with their own procedures and policies, consistent with the requirements of this Notice. Accordingly, section 882.503, Obtaining Proposals from Owners; sections 882.504(c)(1), (4), and (5), Selection of Proposals; and section 882.504(d), Notification of Owners, shall not apply to this program.

(3) HUD headquarters will process all applications and select the successful PHAs. HUD intends to complete the selection process by approximately December 1, 1987.

*B. Comprehensive Homeless Assistance Plan (CHAP)*

(1) Section 401 of the McKinney Act prohibits assistance under this program from being made available within the jurisdiction of a State, or a metropolitan city or urban county that is eligible for a formula allocation under the Emergency Shelter Grants program established by the McKinney Act (ESG formula city or county), unless the entity has a HUD-approved CHAP. For PHAs that wish to receive funding under this program, the following rules apply. If the project to be assisted is located *within* an ESG formula city or county, the city or county must have an approved CHAP. If the project is located *outside* an ESG formula city or county, the State must have an approved CHAP. Since Indian tribes are not required to have approved CHAP's the CHAP requirement does not apply to PHAs seeking funding for projects within the jurisdictions of Indian tribes.

(2) The Department published a Notice in the **Federal Register** on August 14, 1987 (52 FR 30628) establishing requirements for CHAPs. Among other things, that Notice listed the ESG formula cities and counties and other entities that are subject to the CHAP requirements. Potential applicants under this program are encouraged to familiarize themselves with these requirements.

*C. PHA Application*

Section 441 of the McKinney Act requires that HUD allocate the amounts made available for this program on the basis of a national competition to the applicants that best demonstrate a need for the assistance and the ability to undertake and carry out a program to be assisted. Each application shall contain the following information to enable HUD to make these determinations.

(1) *Size and Characteristics of SRO Population.* The application shall include a description of the size and characteristics of the homeless population within the applicant's jurisdiction that would occupy SRO dwellings under this program, and a statement of the basis for this description. The application shall also state whether the PHA intends to serve a designated population of homeless persons, such as substance abusers and the chronically mentally ill.

(2) *Inventory of Suitable Housing Stock to Be Rehabilitated under this Program.*

(a) The PHA application shall include an inventory of structures, by address (indicating city and urban county, where applicable), that would be available and appropriate for rehabilitation under this program, and shall specify the number of units the PHA proposes to assist. The application shall also describe the type of rehabilitation expected.

(b) Where possible, instead of the inventory under paragraph (a), the application shall identify specific structures, by address (indicating city and urban county where applicable), that the PHA proposes for rehabilitation and assistance under this program, including:

(i) The total number of units in each structure; and

(ii) The number of SRO units to be assisted under this program, and the number of vacancies among SRO units to be assisted.

The application shall also describe the type of rehabilitation expected.

(3) *Interest in Participation.* The PHA application shall include a description of the interest that has been expressed by builders, developers, Owners and others (including profit and nonprofit organizations) in participating in the program. This may include statements

expressing interest in acquiring or rehabilitating structures identified in the application and in providing supportive services or otherwise assisting the PHA or the Owners in meeting program requirements.

(4) *Additional Commitments.* The application shall describe any additional commitments from public and private sources, which may include (but are not limited to):

(a) Below market interest rate rehabilitation financing;

(b) Donation of real estate or furniture; and

(c) Supportive services.

The application shall identify any supportive services (as defined in section VII.B.) which would be necessary for the population expected to be served. (If this information on supportive services is not available, the PHA may obtain these commitments later, but no later than the date of execution of the Agreement.) The PHA shall demonstrate that the necessary supportive services appropriately address the needs of the homeless population to be served. These services may be provided in the project or elsewhere, if the services are readily accessible to the homeless population to be served. Services are readily accessible if residents can get to the services on their own, or if transportation is provided to the site where the services are provided. The application shall also include a description of how the necessary services will be made available. The PHA is encouraged to include information on commitments for any additional supportive services which would be desirable, but are not necessary.

(6) *CHAP Certifications.* The application shall contain a certification by the public official responsible for submitting a CHAP for the jurisdiction where the project(s) is to be located that the proposed project is consistent with the CHAP. (See, also, paragraph B. of this section.)

(7) *CHAP and Local Government Certifications.* The PHA and the chief executive officer of each unit of general local government in which a project is proposed to be located shall certify that, on or before January 4, 1988 (a) the PHA will be able to complete all necessary steps in time to enter into an Agreement, and (b) necessary private or public resources for the project will be committed. The certification shall also include a statement that the PHA and chief executive officer understand that if the January 4, 1988, deadline is not met, HUD may cancel its approval of the application, terminate the ACC (if executed), recaptured any reservation for the project, and reuse the recapture amounts for other approvable applications then available or which become available as a result of another national competition.

(8) *Permanent Displacement Certification.* The application shall contain a certification from the PHA that neither its proposed activities, nor the acquisition or rehabilitation activities of any Owner whose proposal is selected or considered for selection, will result in the permanent displacement of any residential tenant or owner-occupant.

(9) *Section 213 Letter.* Section 213 of the Housing and Community Development Act of 1974 requires HUD to provide the chief executive officer of the unit of general local government an opportunity to comment on the application. Where the unit of general local government has a housing assistance plan, its comment may include an objection to HUD approval of an application for housing assistance on the grounds that the application is inconsistent with the local housing assistance plan. PHAs should encourage the chief executive officer to submit a section 213 letter with the PHA application. See Part 791 for specific requirements. Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application and indicate that approval of the application for assistance under this Notice is consistent with the community's housing assistance plan, where applicable, but also state that HUD may consider the letter to be the final comments, and that no additional comments will be submitted by the unit of local government.

(10) *Schedule.* The application shall contain a schedule for completion of all necessary steps through execution of the Housing Assistance Payments Contract and demonstrate that it is feasible for the PHA to meet its schedule. The schedule shall specify dates for completion of at least the following:

(a) Selection of the specific structure or structures to be rehabilitated (if not already specified in the application);

(b) Inspection of units, feasibility analysis, detailed work write-ups, and cost estimates;

(c) Determine initial base rents and Contract Rents;

(d) Ensuring that firm commitments of financing and identified necessary supportive services and other resources to be provided are in place;

(e) Execution of the Agreement (must be on or before January 4, 1988);

(f) Start of rehabilitation activities, with an identification of any which may be affected by weather conditions and a discussion of how weather delays have been taken into account; and

(g) Execution of the Contract (must be within six months from execution of the Agreement).

(11) *Administrative Capability and Rehabilitation Expertise.* The application shall include a description of the PHA's experience in administering the section 8 Moderate Rehabilitation Program and a description of the PHA's rehabilitation expertise.

(12) *Financing.* The application shall indicate the types of financing expected to be used, including Federal, State, or locally assisted financing programs, and describe the availability of such financing.

*D. HUD Selection Process*

(1) *Part 791.* Upon receipt of an application that does not include a section 213 letter from the chief executive officer of the Unit of general local government (see paragraph C.(9)), HUD shall send the application to the appropriate chief executive officer in accordance with 24 CFR Part 791.

(2) *Ranking.* HUD will rank all applications from PHAs administering the Moderate Rehabilitation Program that contain all items required by section C., based upon its assessment of which applications have the best combination of the following:

(a) The need for assistance, as demonstrated by the PHA's analysis of the size and characteristics of the population to be served, and by the reliability of the basis for the analysis; and

(b) The PHA's ability to undertake and carry out the program within the schedule proposed by the PHA, as demonstrated by:

(i) Whether the PHA has proposed specific projects for assistance or only submitted an inventory of structures that would be available and appropriate for rehabilitation under this program;

(ii) Whether there is evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA's schedule;

(iii) The percentage of units proposed for assistance which are vacant (rehabilitation of vacant units will result in more units becoming available for the homeless);

(iv) Whether it appears feasible that the PHA and Owner will complete all steps necessary so the Agreement may be executed before January 4, 1988, and

will execute the Contract within six months of execution of the Agreement;

(iv) Whether it appears feasible that the PHA and Owner will execute the Contract sooner than six months from execution of the Agreement;

(vi) Whether the PHA has specified the resources available to provide necessary and any desirable supportive services, including the strength and length of the commitments to provide those resources;

(vii) Other public and private resources to be provided, including the availability of financing, both assisted and unassisted, as demonstrated by statements or commitments form lenders;

(viii) The PHA's experience with the section 8 Moderate Rehabilitation Program, including past performance in placing units under Agreement, and the PHA's overall administrative capability, as evaluated by the HUD field office;

(ix) The demonstrated capacity of the PHA to administer a rehabilitation program; and

(x) The overall feasibility of the proposed program.

HUD shall assign 30 percent of the points based on paragraph (a) and 70 percent based on paragraph (b).

(3) *Selection of Applications.*

(a) HUD will select the highest ranking applications. However, no city or urban county may have projects receiving a total of more than 10 percent of the assistance to be provided under this program ($350,000 in contract authority per year, which HUD expects will fund a maximum of approximately 60–80 units for any one city or urban county).

(b) HUD will notify each PHA whether or not its application has been selected.

(c) Where the review and comment process required under 24 CFR Part 791 has not been completed by the time HUD is ready to make its selections, it may select one or more applications subject to completion of the process required under Part 791, if it has determined that the application is consistent with a housing assistance plan (where applicable). See, also, paragraphs C.(9) and D.(1).

*E. ACC Exectution*

(1) Before execution of the ACC, the PHA shall submit to the appropriate HUD field office the following:

(a) Equal Opportunity Housing Plan and Certifications, Form HUD–920;

(b) Estimates of Required Annual Contributions, Forms HUD–52672 and HUD–52673;

(c) Administrative Plan;

(d) Proposed Schedule of Allowances for Tenant-Furnished Utilities and Other Services, Form HUD–52667, with a justification of the amounts proposed;

(e) If applicable, proposed variations to the acceptability criteria of the Housing Quality Standards (see section II.B); and

(f) the fire and building code applicable to each project.

(2) After HUD approves the PHA's application, the requirements of 24 CFR Part 791 have been complied with, and the PHA has submitted and HUD has approved the items required by paragraph (1), HUD and the PHA shall execute the ACC in the form prescribed by HUD, on or before January 4, 1988. The ACC shall give HUD the option to renew the ACC for an additional 10 years. The PHA should not wait to receive the executed ACC before proceeding with project development in accordance with paragraph F.

(3) Section 882.403(a), Maximum Total ACC Commitments, shall apply to this program.

(4) Section 882.403(b), Project Account, shall apply to this program.

*F. Project Development*

Before execution of the Agreement, the PHA shall:

(1)(a) Inspect the project(s) to determine the specific work items which need to be accomplished to bring the unit(s) to be assisted up to the Housing Quality Standards (see section II.B.) or other standards approved by HUD; (b) conduct a feasibility analysis, and determine whether cost-effective energy conserving improvements can be added; (c) ensure that the Owner prepares the work write-ups and cost estimates required by § 882.504(f); and (d) determine initial base rents and Contract Rents;

(2) Assure that the Owner has selected a contractor in accordance with § 882.504(g);

(3) After the financing and a contractor are obtained, determine whether the costs can be covered by initial Contract Rents, computed in accordance with section G.; and, where a project contains more than 50 units to be assisted, submit the base rent and Contract Rent calculations to the appropriate HUD field office for review and approval in sufficient time for execution of the Agreement on or before January 4, 1988;

(4) Obtain firm commitments to provide necessary and any desirable supportive services;

(5) Obtain firm commitments for other resources to be provided;

(6) Develop procedures for tenant outreach and for establishing a waiting list(s);

(7) Develop a policy governing temporary relocation;

(8) Design a mechanism to monitor the provision of supportive services;

(9) Review and approve the Lease, including any special Lease provisions related to special characteristics of the designated population to be served, such as provisions prohibiting the use of alcohol in projects targeted for persons with alcoholism;

(10) Require the Owner to demonstrate to the PHA's satisfaction that the allowable rent will be sufficient to rehabilitate, manage, and maintain the units adequately;

(11) Determine that the $1,000 minimum amount of work requirement and other requirements in §§ 882.504 (c)(2) and (c)(3) are met;

(12) Determine eligibility of current tenants, and select the units to be assisted, in accordance with § 882.504(e);

(13) Comply with the financing requirements in § 882.504(i); and

(14) Assure compliance with all other applicable requirements of this Notice.

*G. Initial Contract Rents*

Section 882.408, Initial Contract Rents (including the establishment of fair market rents for SRO units at 75 percent of the 0-bedroom Moderate Rehabilitation Fair Market Rent), shall apply to this program, except as follows:

(1)(a) In determining the monthly cost of a rehabilitation loan, in accordance with § 882.408(c)(2), a 10-year loan term (instead of a 15-year loan term) shall be assumed. The exception in § 882.408(c)(2)(iii) for using the actual loan term where the total amount of the rehabilitation is less than $15,000 shall continue to apply. In addition, the cost of the rehabilitation that may be included for the purpose of calculating the amount of the initial Contract Rent for any unit shall not exceed the lower of (i) the projected cost of rehabilitation, or (ii) $14,000 per unit, plus the cost of the fire and safety improvements required by section II.B.(2). HUD shall, however, increase the limitation in clause (ii) by an amount it determines is reasonable and necessary to accommodate special local conditions, including high construction costs or stringent fire or building codes.

(b) Where the PHA believes that high construction costs warrant an increase in the limitation in paragraph G.(1)(a)(ii), the PHA shall demonstrate to HUD's satisfaction that a higher average per unit amount is necessary to conduct this

program and that every appropriate step has been taken to contain the amount of the rehabilitation within an average of $14,000 per unit, plus the cost of the required fire and safety improvements. These higher amounts will be determined as follows:

(i) HUD may approve a higher average per unit amount up to, but not to exceed, an amount derived by applying the HUD-approved High Cost Percentage for Base Cities (used for computing FHA high cost area adjustments) for the area to the total of the $14,000 average per unit cost and the cost of the required fire and safety improvements; or

(ii) HUD may, on a project-by-project basis, increase the level approved in paragraph (i) to up to an amount computed by multiplying 2.4 by the total of the $14,000 average per unit cost and the cost of the required fire and safety improvements.

(2) In approving changes to initial Contract Rents during rehabilitation in accordance with § 882.408(d), the revised Contract Rents may not reflect an average per unit rehabilitation cost that exceeds the limitation specified in paragraph G.(1) of this section.

(3) Where the project involves a structure containing four or fewer SRO units, the Fair Market Rent for that size structure (the Fair Market Rent for a 1-, 2-, 3-, or 4-bedroom unit, as applicable) shall apply instead of a separate Fair Market Rent for each SRO unit. The Fair Market Rent for the structure shall be allocated to each SRO unit.

(4) Contract Rents shall not include the costs of providing supportive services, transportation, furniture, or other non-housing costs, as determined by HUD. PHAs shall consult with HUD where it is not clear whether the cost may be covered by the Contract Rent.

**IV. Agreement To Enter Into Housing Assistance Payments Contract, Rehabilitation Period, and Cost Certifications**

*A. Rehabilitation Period*

(1) *Agreement.* Before the Owner begins any rehabilitation, but no later than January 4, 1988, the PHA shall enter into an Agreement with the Owner in the form prescribed by HUD.

(2) *Timely Performance of Work.* Section 882.506(a) shall apply to this program. In addition, the Agreement shall provide that the work shall be completed and the Contract executed within six months of execution of the Agreement. HUD may reduce the number of units or the amount of the annual contribution commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify a reduction in the number of units.

(3) *Inspections.* Section 882.506(b) shall apply to this program.

(4) *Changes.* Section 882.506(c)(1) shall apply to this program. Contract Rents may only be increased in accordance with section III.G.(2).

(5) *List of Vacancies.* Section 882.506(d) shall apply to this program. See also, section VI.A., Outreach to Lower Income Individuals and Appropriate Organizations.

*B. Completion of Rehabilitation*

(1) *Notification of Completion.* Section 882.507(a) shall apply to this program.

(2) *Evidence of Completion.* Section 882.507(b) shall apply to this program, except that § 882.507(b)(2)(iv), concerning lead-based paint requirements, shall not apply.

(3) *Actual Cost and Rehabilitation Loan Certifications.* Section 882.507(c) shall apply to this program, except that Contract Rents shall be established in accordance with section III.G.

(4) *Review and Inspections.* Section 882.507(d) shall apply to this program.

(5) *Acceptance.* Section 882.507(e) shall apply to this program.

**V. Housing Assistance Payments Contract**

*A. Time of Execution of Contract*

Section 882.508(a) shall apply to this program.

*B. Term of Contract*

The Contract for any unit rehabilitated in accordance with this program shall be for a term of 10 years. The Contract shall give the PHA the option to renew the Contract for an additional 10 years.

*C. Changes in Contract Rents from Agreement*

The Contract Rents may be higher or lower than those specified in the Agreement, in accordance with section III.G.

*D. Unleased Unit(s)*

Section 882.508(c) shall apply to this program.

*E. Contract Rents at End of Rehabilitation Loan Term*

Section 882.409 shall apply to this program, except that the requirement to reduce rents shall apply on the earlier of: (1) The end of the term of the rehabilitation loan, or (2) 10 years from the effective date of the Contract. Base rents for this program are determined under section III.G.

**VI. Management**

*A. Outreach to Lower Income Individuals and Appropriate Organizations; Waiting List(s)*

(1) *Outreach to Lower Income Individuals and Appropriate Organizations.* Promptly after receiving the executed ACC, the PHA shall engage in outreach efforts to make known the availability of this program to homeless individuals in general or homeless individuals in the category for which the project is designed, such as substance abusers. The PHA shall also ask appropriate organizations to refer homeless individuals to the PHA or assist the PHA in locating them. Any outreach shall be made in accordance with the PHA's HUD-approved application and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan.

(2) *Waiting List(s).* The PHA shall maintain a separate waiting list for all applicants (or each category of applicants) for this program. In establishing the waiting list(s), the PHA shall first review any of its existing waiting lists for section 8 Moderate Rehabilitation and Existing Housing (Certificate and Housing Voucher) programs and add the names of any homeless individuals on those lists to the list(s) for this program, where it is able to identify the individuals on those lists as homeless. The names of the individuals on the section 8 Moderate Rehabilitation and Existing Housing lists shall remain on those lists as well.

(3) *First Priority for Homeless Individuals.* Homeless individuals on the waiting list(s) shall have a first priority for occupancy of housing rehabilitated under this program.

*B. Individual Participation*

(1) *Initial Determination of Individual Eligibility.* Section 882.514(a) shall apply to this program. (The Department has suspended requirements relating to alien status pending development of a new regulation.)

(2) *PHA Selection of Individuals for Participation.* Section 882.514(b) shall apply to this program, except that the PHA shall only refer Homeless Individuals.

(3) *Owner Selection of Individuals.* All vacant units under Contract shall be rented to Homeless Individuals referred by the PHA from its waiting list(s). However, if the PHA is unable to refer a sufficient number of interested applicants on the waiting list(s) to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the

Owner may advertise or solicit applications from homeless persons, and refer such persons to the PHA to determine eligibility. Since the Owner is responsible for tenant selection, the Owner may refuse any Individual provided that the Owner does not unlawfully discriminate. Should the Owner reject an Individual, and should the Individual believe that the Owner's rejection was the result of unlawful discrimination, the Individual may request the assistance of the PHA in resolving the issue. If the issue cannot be resolved promptly, the Individual may file a complaint with HUD, and the PHA may refer the Individual to the next available unit in this program.

(4) *Leasing to Non-Homeless Individuals.* When neither the PHA nor the Owner can find a sufficient number of interested applicants who are Homeless Individuals, the Owner may rent to non-homeless Eligible Individuals, in accordance with § 882.514 (a) through (c).

(5) *Briefing of Individuals.* Section 882.514(d) shall apply to this program, except that paragraph (d)(1)(vi) shall not apply.

(6) *Continued Participation of Individual When Contract Is Terminated.* Section 882.514(e) shall apply to this program, except that the PHA may issue a Housing Voucher instead of a Certificate.

(7) *Individuals Determined by the PHA to Be Ineligible.* Section 882.514(f) shall apply to this program. In addition, individuals are not precluded from exercising other rights if they believe they have been discriminated against on the basis of age.

*C. Lease*

(1) *Contents of Lease.* Section 882.504(j) shall apply to this program. In addition, the Lease shall limit occupancy to one Eligible Individual.

(2) *Term of Lease.* Section 882.403(d) shall apply to this program.

*D. Security and Utility Deposits*

Section 882.112 shall apply to this program.

*E. Rent Adjustments*

Section 882.410 shall apply to this program.

*F. Payments for Vacancies*

Section 882.411 shall apply to this program.

*G. Subcontracting of Owner Services*

Section 882.412 shall apply to this program.

*H. Responsibility of the Individual*

Section 882.413 shall apply to this program.

*I. Reexamination of Individual Income*

(1) *Regular Reexaminations.* The PHA shall reexamine the income of all Individuals at least once every 12 months. After consultation with the Individual and upon verification of the information, the PHA shall make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR Part 813, and determine whether only one individual is still occupying the unit. The PHA shall adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment.

(2) *Interim Reexaminations.* The Individual shall supply such certification, release, information, or documentation as the PHA or HUD determines to be necessary, including submissions required for interim reexaminations of Individual income and determinations as to whether only one person is occupying the unit. In addition, the second and third sentences of section 882.515(b) shall apply.

(3) *Continuation of Housing Assistance Payments.* Section 882.515(c) shall apply to this program.

*J. Overcrowded Units*

If the PHA determines that anyone other than, or in addition to, the Eligible Individual is occupying an SRO unit assisted under this program, the PHA shall take all necessary action, as soon as reasonably feasible, to ensure that the unit is occupied by only one Eligible Individual. Such action may include assisting the occupants of the unit in locating other housing, and requiring the occupants who do not have a right to occupy the unit under the Lease to move to other housing.

*K. Adjustment of Utility Allowance*

Section 882.510 shall apply to this program.

*L. Termination of Tenancy*

Section 882.511 shall apply to this program.

*M. Reduction of Number of Units Covered by Contract*

Section 882.512 shall apply to this program.

*N. Maintenance, Operation, and Inspections*

Section 882.516 shall apply to this program.

*O. HUD Review of Contract Compliance*

Section 882.217 shall apply to this program.

**VII. Definitions**

A. Section 882.402 shall apply to this program, except that:

(1) With respect to the definition of Moderate Rehabilitation, in determining compliance with the $1,000 minimum expenditure required to qualify as Moderate Rehabilitation, the cost of the repair or replacement of major building systems or components in danger of failure shall not be counted; and

(2) With respect to the definition of Single Room Occupancy (SRO) Housing, the requirement that an SRO unit must be located within a multifamily structure consisting of more than 12 units shall not apply.

B. In addition to the definitions contained in § 882.402, the following definitions shall apply to this program:

*Eligible Individual ("Individual").* A lower income individual who, taking into account the supportive services available to the individual, is capable of independent living as a "Family" or "Single Person" under 24 CFR Part 812.

*Homeless Individual.* An individual who—

(1) Is an Eligible Individual,

(2) Lacks a fixed, regular, and adequate nighttime residence; and

(3) Has a primary nighttime residence that is—

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "Homeless Individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

*Supportive Services.* Services that may include outpatient health services; employment counseling; nutritional counseling; security arrangements necessary for the protection of residents of facilities to assist the homeless; other services essential for maintaining independent living; assistance to homeless individuals in obtaining other Federal, State, and local assistance available for such individuals, including mental health benefits, employment counseling, medical assistance, and

income support assistance, such as Supplemental Security Income benefits, General Assistance, and Food Stamps; and residential supervision necessary to facilitate the adequate provision of supportive services to the residents. The term does not include major medical equipment.

**VIII. Waivers**

*A. Authority To Waive Provisions of This Notice*

Upon determination of good cause, the Assistant Secretary for Housing—Federal Housing Commissioner may, subject to statutory limitations, waive any provision of this Notice. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

*B. Waiver of the Limitation and Preference in the Second and Third Sentences of Section 3(b)(3) of the 1937 Act*

Section 8(n) of the U.S. Housing Act of 1937 authorizes HUD, in appropriate cases involving SRO housing, to waive the limitation and preference in the second and third sentences of section 3(b)(3) of that Act. The second sentence of section 3(b)(3) limits to 15 percent the number of units under the jurisdiction of any PHA which can be occupied by "other single persons" (those which do not qualify as elderly, displaced, or the remaining member of a tenant family). The third sentence requires a preference for persons who are elderly, handicapped, or displaced over other single persons.

The Department believes that waiver of the limitation and preference is appropriate for this program since many of those who will occupy this housing would not be subject to the 15 percent limitation and would qualify for the preference. Therefore, in light of the administrative burden involved, HUD hereby waives these provisions for purposes of this program. In addition, any regulations implementing the percentage limitation or the preference shall not apply to units assisted under this Notice. The authority elsewhere in section 3(b)(3) to "increase the [15 percent] limitation described in the second sentence" to 30 percent does not apply, since the limitation in the second sentence has been waived and there is no applicable limitation in the second sentence to "increase."

**Other Information**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). When OMB has approved these requirements, HUD will announce control numbers in a Federal Register Notice. Until that time, no person may be subjected to a penalty for failure to comply with information collection requirements.

(The Catalog of Federal Domestic Assistance Program number is 14.156, Lower Income Housing Assistance Program.)

**Authority:** Sections 401 and 441 of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, approved July 22, 1987; section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 9, 1987.

**James E. Schoenberger,**

*General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 87–23902 Filed 10–14–87; 8:45 am]

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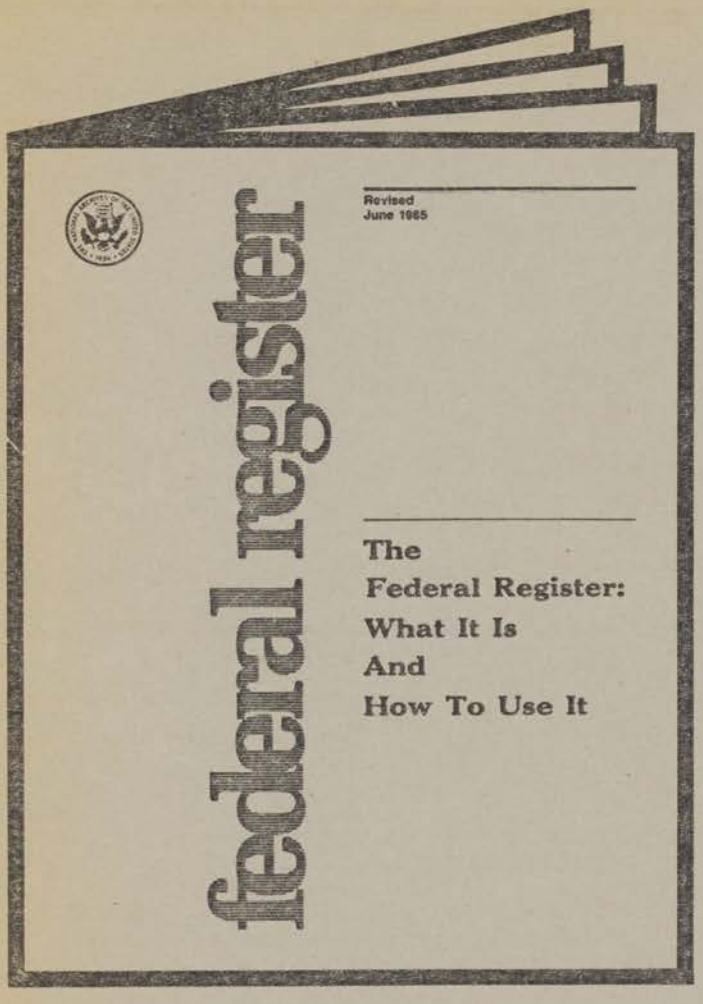
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