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Wednesday
March 29, 1989

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For information on briefings in Washington, DC, and Salt Lake City, UT, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: April 11, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

SALT LAKE CITY, UT

WHEN: April 12, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
RESERVATIONS: Call the Utah Department of Administrative Services, 801–538–3010

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Presidential Documents

Title 3—

The President

Proclamation 5946 of March 24, 1989

Actors' Fund of America Appreciation Month, 1989

By the President of the United States of America

A Proclamation

The Actors' Fund of America has given dedicated service to members of the entertainment industry for more than one hundred years. Its history is the magnificent story of an organization built upon the generosity of entertainers—not only as a charitable organization, but as the "conscience" of their community.

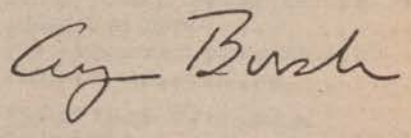
Although it is the oldest theatrical charity in the world, the Fund's services are not confined to actors; they are available to any bona fide professional who works in motion pictures, radio, television, ballet, opera, variety, circus, and the legitimate stage. Those services, designed to accommodate the special needs of members of the entertainment community, range from financial assistance and career counseling to home nursing care. Through its actions, the Fund carries on the great American tradition of community. It is a tradition steeped in its values of concern for one another—the obligation borne of community to help another in need.

In a less direct manner, the Actors' Fund of America benefits our entire country. As the Fund assists entertainers, entertainers, in turn, donate their time and talents to many worthy causes throughout the United States. Performing artists have raised the morale of our Nation's Armed Forces in peacetime and in time of war. They have demonstrated selfless generosity to countless charitable events, bringing help to the needy and joy to the sick. And by their shining example, they demonstrate to all Americans that any definition of a successful life must include serving others. This Proclamation provides the opportunity for a grateful nation to say "thank you."

The Congress, by Public Law 100–686, has designated the month of April 1989 as "Actors' Fund of America Appreciation Month."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 1989 as Actors' Fund of America Appreciation Month. I call upon all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89–7578
Filed 3–27–89; 4:38 pm]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 88-203]

Incorporation by Reference; Plant Protection and Quarantine Treatment Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Protection and Quarantine regulations by adding a dry heat treatment for papayas from Hawaii to the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual is incorporated by reference in the regulations at 7 CFR 300.1.

EFFECTIVE DATE: April 28, 1989.

FOR FURTHER INFORMATION CONTACT: James F. Fons, Senior Staff Officer, Science and Technology, APHIS, USDA, Room 227, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6472.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of Title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service. Section 300.1 of the regulations incorporates by reference the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual contains procedures and schedules for treating various regulated articles so that these articles may move into or within the United States and not present a plant pest risk.

On November 2, 1988, we published in the **Federal Register** (53 FR 44199-44200, Docket Number 88-133) a document proposing to amend § 300.1 of the regulations to show that the PPQ Treatment Manual, which is incorporated by reference and on file at the Office of the Federal Register, is being revised to include a dry heat treatment for papayas from Hawaii. Our proposal invited the submission of written comments, which were required to be postmarked or received on or before December 2, 1988. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Miscellaneous Change

We are also amending § 300.2 to update the addresses for requesting copies of materials incorporated by reference.

Executive Order 12291 and Regulatory Flexibility Act

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

This rule will provide an additional treatment option to the seven packinghouses in Hawaii that ship papayas to the United States mainland. The additional treatment option can be completed with less complicated equipment in a shorter time period, and will result in a higher quality product. No change in price or production is anticipated as a result of this rule.

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

Paperwork Reduction Act

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

Accordingly, Title 7, Chapter III of the Code of Federal Regulations is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for Part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. Section 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions issued through March 1989, has been approved for incorporation by reference in 7 CFR Chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

* * * * *

3. In § 300.2, paragraph (a) the words "Plant Protection and Quarantine" are removed the first time they appear in the paragraph and the words "Science and Technology" are added in their place.

4. Also in § 300.2, paragraph (a) the number "643" is removed and "228" is added in its place.

5. Section 300.2, paragraph (b) is revised to read as follows:

§ 300.2 Availability of material incorporated.

* * * * *

(b) Copies of materials incorporated by reference in § 300.1 may be obtained by writing to Recruitment and

Development, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 238, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

* * * * *

Done in Washington, DC, this 24th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-7411 Filed 3-28-89; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 319

[Docket No. 89-028]

Importation of Apples, Peaches, and Citrus From Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by removing Empalme from the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches and tangerines may be imported without treatment for these pests. This action is necessary to prevent the introduction into the United States of injurious insects.

DATES: Interim rule effective March 24, 1989. Consideration will be given only to comments postmarked or received on or before May 30, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-028. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141-South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Section 319.56-2(h) of the regulations allows apples, grapefruit, oranges, peaches and tangerines to be imported from certain municipalities in Sonora, Mexico, without treatment for five fruit flies known to occur in Mexico (*Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus*). Prior to the effective date of this document, these municipalities included the following: Altar, Atil, Caborca, Carbo, Empalme, Hermosillo, Pitiquito, Puerto Penasco, and San Miguel.

Section 319.56-2(f) allows a municipality to be listed in § 319.56-2(h) only if surveys show it to be free from infestations of these insect pests. We have received reports from Animal and Plant Health Inspection Service inspectors confirming that an infestation of *Anastrepha ludens* exists in the municipality of Empalme. Therefore, we are removing Empalme, Sonora, Mexico, from the list of municipalities in § 319.56-2(h).

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of injurious insects into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we received and any amendments we are making to the rule as a result of the comments. Executive Order 12291 and Regulatory Flexibility Act.

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

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

This action will prevent the importation of apples, grapefruit, oranges, peaches, and tangerines from Empalme into the United States, unless they are treated for the five listed fruit flies. Only the movement of oranges and grapefruit would be affected, since these are the only citrus fruits that were shipped from Empalme last year. This change will have little economic effect on small entities because the quantity of fruit moved from Empalme last year is insignificant compared to the total quantity of these fruits produced in Mexico or in the United States.

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

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR Part 319 is amended as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2 [Amended]

2. In § 319.56–2 paragraph (h) is amended by removing "Empalme,".

Done in Washington, DC, this 24th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–7410 Filed 3–28–89; 8:45 am]

BILLING CODE 3410–34–M

Farmers Home Administration

7 CFR Part 1980

Rural Housing Program Loans; Housing and Community Development Act of 1987

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its Guaranteed Rural Housing Loans regulation. This action is taken to conform with the insured 502 Rural Housing Program, to revise the method of guaranteeing loans made by other lenders and to remove certain obstacles in loan making. The intended effect of this action is to strengthen the Agency's mission of rural development and to carry out a demonstration program.

DATES: *Effective Date:* March 29, 1989. Comments must be received on or before May 30, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence, SW., Washington DC 20250. All written comments will be available for public inspection at the above address. The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Specialist, at Farmers Home Administration, USDA, Room 5334–S, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, Telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions or significant adverse effects on competition, employment, productivity, innovation or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion

In December 1987, Congress passed the Housing and Community Development Act of 1987 (Pub. L. 100–242). This bill became law on February 5, 1988. It initially provided for a demonstration program for guaranteed rural housing loans to applicants with moderate incomes that do not exceed median. The authorization for a demonstration program for guaranteed rural housing loans was further amended by the Stewart B. McKinney Homeless Assistance Amendment Act of 1988 (Pub. L. 100–628). This action is being implemented on an emergency basis as an interim rule as Pub. L. 100–628 requires the Secretary to issue regulations to take effect not later than 120 days after the date of enactment of Pub. L. 100–628, which was November 7, 1988. Median income is slightly above that which is defined as moderate by the Department of Housing and Urban Development.

In the late 1970's FmHA offered a guaranteed loan program for above-moderate income applicants. This program, on the other hand, is directed toward applicants with moderate incomes that do not exceed the median income of the area. Except in a few states, there were very few loans guaranteed under this authority. This revision alleviates many of the problems with the previous program. FmHA contacted some of the more active participants and some knowledgeable parties who did not participate extensively in order to determine what could be done to improve the program, in order to best serve rural areas while attracting lenders to participate.

The Agency has attempted to address the reluctance of lenders to make loans under the program to the maximum extent possible within its authorities.

The Housing and Community Development Act of 1987 calls for the Secretary to implement a guaranteed housing loan demonstration program for the purpose of evaluating the feasibility of guaranteed loans.

Since this program is a demonstration program, FmHA has placed the emphasis for the program in the State Office. FmHA believes this will get the program started since it would not pose an additional burden on FmHA County Supervisors to learn another new program and will allow State Offices to establish the program with the maximum consistency. The Agency intends to move the program to the County Office level should the volume and activity of the program warrant such.

All loans made under this regulation will be through FmHA approved lenders. FmHA permits the lender to use its own forms to the maximum extent possible. Approved lenders process loans to the point of approval and submit information on the applicant and the loan proposal to FmHA. FmHA will evaluate the application and respond to the lender within a minimum amount of working time with a determination of whether the loan proposal is eligible and there are funds available.

In most cases the regulation allows loans of up to 100 percent of the market value of the dwelling or 100 percent of the acquisition cost, whichever is less. This removes a criteria for a required down payment by the applicant.

Other changes include provisions to assure that only modest dwellings are financed under the program. In order to accomplish this, FmHA has provided for a similar size and type dwelling as is permitted under the Agency's regular section 502 loan program.

In order to distinguish between guaranteed housing and other loan guarantees, FmHA has determined that the guaranteed housing regulation should stand on its own. FmHA believes this will help reduce burden on Lenders and minimize the materials the Lender must read and comprehend in order to participate in the guaranteed program. Therefore, the Agency has exempted this subpart from Subpart A of Part 1980.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with

respect to such rules. However, FmHA is making this action effective immediately upon publication in the **Federal Register** without securing prior public comment. The reason for this decision is that the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires that the Secretary of Agriculture issue regulations that are effective within 120 days of enactment. In the interest of providing the best service possible, the Agency solicits comments on all aspects of this interim rule and will consider such comments in the development of the final rule.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.429, Guaranteed Rural Housing Loans—Demonstration Program.

Intergovernmental Consultation

For the reason set forth in the final rule related notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. However, this activity impacts on planning and performing site development work when an application involves a subdivision of 5 or more units which has not been approved by FmHA, HUD, or VA which is included in the scope of Executive Order 12372.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan Programs—Housing and Community Development, Mortgage insurance, mortgages, rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—General

§ 1980.1 [Amended]

2. Section 1980.1 is amended by inserting the words "except for Subpart D, Rural Housing Program Loans" after the words "Part 1980" in the first sentence.

§ 1980.6 [Amended]

3. Section 1980.6, paragraph (a) is amended by removing the words, "and RH" in the parenthetical phrase in the definition for *Borrower*.

4. Subpart D is revised to read as follows:

Subpart D—Rural Housing Loans

Sec.

Sec.

Exhibits to Subpart A

Subpart D—Rural Housing Loans

§ 1980.301 Introduction.

(a) *Policy.* This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Farmers Home Administration (FmHA) and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, servicing, holding or liquidating such loans.

(b) *Program objective.* The basic objective of the RH guaranteed loan program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which would not be made without a guarantee. Loans made under this subpart are limited to moderate income applicants that do not exceed median income limits as provided in Exhibit C (available in any FmHA office). Authority to guarantee loans under this subpart expires on September 30, 1991.

(c) *Program administration.* The loan guarantee program is administered by the Administrator through a State Director, serving each State. All applications for the guaranteed loans should be made with an approved lender. The State Director is the focal point and local contact person for loan processing, approval of lenders, and loan servicing under this program, although this subpart refers in various places to the duties and responsibilities of other FmHA employees. State Directors will not issue supplements to this regulation without prior approval of the Assistant Administrator, Housing, except as specifically provided herein.

§ 1980.302 Definitions.

The following definitions are applicable to RH loans:

Applicant. The party applying for the guaranteed loan.

Approval official. An FmHA employee with delegated loan approval authority under Subpart A of Part 1901 of this chapter consistent with the amount and type of loan considered.

Approved lender agreement. The signed master agreement between FmHA and the lender setting forth the lender's loan responsibilities when the loan Note Guarantee is issued.

Assignment agreement. That portion of Form FmHA 1980–17, "Loan Note Guarantee and Assignment Guarantee Agreement," which had been signed by and represents an agreement among FmHA, the lender, and the holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

Borrower. All parties liable for the loan or any part of it.

Building Code. A development standard adopted by the FmHA State Director in accordance with § 1924.5(d)(1)(i)(E) of Subpart A of Part 1924 of this chapter. This information is available in any FmHA office.

Conditional Commitment for Single Family Housing Loan Guarantee, (Form FmHA 1980–18). FmHA's notice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in the Conditional Commitment.

Disabled person. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Form FmHA 1944–4, "Certification of Disability or Handicap," will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(a) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(b) Is manifested before the person attains age 22;

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

(1) Self-care,

(2) Receptive and expressive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living,

(7) Economic self-sufficiency; and

(e) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Elderly family. An elderly family consists of one of the following:

(a) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is handicapped or disabled and is the applicant/borrower or the co-applicant/co-borrower; or

(b) Two or more unrelated elderly (age 62 or older), disabled, or handicapped persons who are living together, at least one of whom is the applicant/borrower or co-applicant/co-borrower; or

(c) In the case of a family where the borrower/co-borrower or spouse, was at least 62 years old, handicapped, or disabled, the surviving household member(s) shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving member(s) may not meet the definition of elderly family on their own, provided:

(1) They occupied the dwelling with the deceased family member at the time of his/her death; and

(2) If one of the surviving members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(3) At the time of death the dwelling of the deceased family member was financed under Title V of the Housing Act of 1949, as amended.

Existing dwelling. A dwelling which is:

(a) More than 1 year old, or

(b) Previously occupied as a residence.

Extended Family. A double family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is: parents living with their adult children.

Finance Office. The office which maintains FmHA's financial records.

Guaranteed loan. A loan made and serviced by a lender for which FmHA has entered into an agreement with the lender in accordance with this subpart.

Handicapped person. A person having a physical or mental impairment which:

(a) Is expected to be of long or idefinite duration;

(b) Substantially impedes his or her ability to live independently.

(c) Is of such a nature that the person's ability to live independently could be improved by more suitable living conditions. Form FmHA 1944–4 will be used to verify handicap in cases where State Review Board or Social Security records are not available.

Holder. The person or organization other than the lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the loan to an assignee, the assignee becomes a holder upon proper execution of the assignment agreement portion of Form FmHA 1980–17, "Loan Note Guarantee and Assignment Guarantee Agreement."

Household or family. The applicant, co-applicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months (excluding foster children and live-in aides).

Lender. The organization making and servicing the loan which is guaranteed under the provisions of this subpart. The lender is also the party requesting the guarantee.

Loan Note Guarantee (Form FmHA 1980–17). The signed commitment issued by FmHA setting forth the terms and conditions of the guarantee.

Metropolitan Statistical Area (MSA). An MSA is defined according to a detailed set of standards prepared by the Federal Committee on MSAs. An area is defined as an MSA if it contains a city of at least 50,000 population or an urbanized area of at least 50,000 with a total metropolitan population of at least 100,000.

Minimum adequate site. The smallest area sufficient for the dwelling, an adequate water supply and waste disposal system, related facilities, and a yard to be built, purchased, or refinanced. It is usually not more than 1 acre of non-income producing land unless more is needed to provide for a

safe and adequate water supply and waste disposal system.

Minor. A person under 18 years of age. Neither the applicant, co-applicant, or spouse may be counted as a minor. Foster children are not counted as minors for the purpose of determination of annual or adjusted income.

Net family assets. Include:

(a) The value of equity in real property, savings, demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:

(1) Interests in Indian Trust land,

(2) The value of the dwelling and a minimum adequate site,

(3) Cash on hand which will be used to reduce the amount of the loan,

(4) The value of necessary items of personal property such as furniture and automobile(s), and the debts against them,

(5) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

(6) The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the funds continue to be held in trust.

(b) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be less than fair market value if the household member receives important consideration not measurable in dollar terms.

Packager. A builder, developer, real estate agent, or other party who obtains and presents one or more completed applications for guaranteed RH loans to an eligible lender.

State Director. Director of FmHA programs within a State Office and area and local contact for the guaranteed loan program. For the purposes of this Subpart, State Director includes Rural Housing Chiefs and State Office Rural Housing Specialists.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the outstanding debt.

Veteran. A person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable discharge who served on active duty in such forces:

(a) from April 6, 1917 through March 31, 1921;

(b) from December 7, 1941 through December 31, 1946;

(c) from June 27, 1950 through January 31, 1955; or

(d) for more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

§§ 1980.303 through 1980.307 [Reserved]

§ 1980.308 Full faith and credit.

The Loan Note Guarantee and Assignment Guarantee Agreement constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which the lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by the holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those approved by FmHA in its conditional commitment for guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure act but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee and Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee and Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of the debt for repurchase.

§ 1980.309 Lender participation in guaranteed RH loans.

(a) *Eligible lenders.* Eligible lenders as defined in this paragraph may apply for and be approved by FmHA, participation in the FmHA RH loan guarantee program. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Only those lenders listed in this paragraph are eligible to make and service guaranteed loans. A lender must have the capability to adequately service the loan for which a guarantee is requested. Eligible lenders must be in good standing with their licensing authority and meet licensing, loanmaking, and/or loan servicing office requirements in paragarph (c)(3) of this section. Eligible lenders include:

(1) Any Federal or State chartered:

(i) Bank or;

(ii) Savings and loan association.

(2) Any mortgage company that is part of a bankholding company,

(3) Farm Credit Bank or Federal Land Bank Association,

(4) An insurance company regulated by the Association of Insurance Commissioners,

(5) Credit Union, or

(6) State and local government Housing Finance Agencies which do not secure any funds from issuance of tax exempt obligations.

(b) *Responsible lender.* Although the proposed loan may involve other lenders, investors, or packagers, the approved lender will be the lead lender and, for the purposes of this regulation, will be responsible for the servicing and liquidation (if necessary) of the loan. The lender may use agents, correspondents, branches, financial experts, or other institutions in carrying out its responsibilities. The approved lender will serve as FmHA's point of contact for the administration of the program. In order to participate, the lender must:

(1) Normally make loans in the region or geographic location in which approved lender status is sought; or

(2) Have specific expertise in mortgage loans.

(c) *Approval of lenders.* Lenders who meet the requirements of this section may be granted approved lender status

for a period not to exceed 2 years by the FmHA State Director for the State in which the lender is authorized to do business. Approved lender status is required for participation in the Guaranteed Rural Housing Loan Program.

(1) *Objectives.* The objective of the provision for approved lenders is to minimize processing time for the lender's request for a guarantee, minimize the need for a lender's agreement for each loan guaranteed by FmHA, and reduce workload responsibilities of FmHA. FmHA will make the final determination on eligibility and loan purposes.

(2) *Application for lender approval.* Eligible lenders may apply to the State Director for the State in which they wish to obtain approved lender status. Requests for approved lender status must include all items listed in § 1980.309(c)(3) and may be accompanied by any supporting evidence or documentation the lender believes will be helpful to FmHA in making a decision.

(3) *Required evaluation criteria.* Lenders must meet all of the following criteria in order to be considered for approved lender status.

(i) Provide evidence of being an eligible lender as defined in § 1980.309(a).

(ii) Have the capacity to process and service FmHA guaranteed RH loans.

(iii) Designate a person(s) with experience in government insured and/or guaranteed loan programs who will process and service FmHA guaranteed RH loans, agree for the person(s) to attend FmHA provided training sessions and provide a resume of the designated person(s) who will process and service FmHA guaranteed RH loans.

(iv) Agree to use forms acceptable to FmHA for processing, analyzing, securing, and servicing FmHA guaranteed RH loans. Copies of financial statements, budgets, loan agreements, analysis sheets, record keeping method, security, and other forms to be used must be submitted for FmHA acceptability with the request for approved lender status.

(v) Agree to abide by all applicable conditions of § 1980.334 for all RH loan guarantees.

(vi) Provide FmHA with a plan for servicing guaranteed RH loan accounts.

(vii) Establish that at least $2.5 million or 50 percent (whichever is less) of total loan portfolio is in housing loans.

(viii) Provide a copy of the most recent Statement of Condition and a description of current mortgage and other loan activity.

(ix) Demonstrate a potential capacity for guaranteed RH loan activity in the trade area. Must have the capacity to generate at least 10 guaranteed loans subject to availability of funds, per year.

(x) Provide comments on experience or ability to comply with regulatory requirements of Environmental Assessments, Equal Opportunity, and Flood and Mudslide. (See §§1980.316 through 1980.318)

(xi) Provide an outline of the lender's internal loan criteria for issues of credit history and repayment ability.

(xii) Provide any other information the lender desires to submit.

(4) *FmHA review of application for approved lender status.* The State Director will verify the information and notify the applicant lender within 15 calendar days of the receipt of a request of the decision or the need for additional information. If the lender is approved as an approved lender then Form FmHA 1980–16, "Approved Lender Agreement for Single Family Housing Loans" will be signed by the lender and FmHA prior to or at the time the first guarantee is issued by FmHA.

(i) *Application retention.* The application material will be retained by the State Director for all approved lenders and periodic checks will be made by the State Director to insure the lender's performance is as outlined in the application.

(ii) *Appeal of adverse decision for approved lender status.* The State Director's decision on approved lender status may not be appealed but the lender may request a review of the decision in accordance with Subpart B of Part 1900 of this chapter.

(iii) *Review of newly approved lender submissions.* The State Director will review not less than the first 5 loan submissions processed by a newly approved lender to assure compliance with and understanding of FmHA regulations.

(5) *Monitoring approved lenders.* The State Director will review the activities of the approved lender on at least an annual basis or more often, if necessary.

(i) If the State Director determines that the lender is not fulfilling the obligations of Form FmHA 1980–16, "Approved Lender Agreement for Single Family Housing Loan Guarantees," or that the lender fails to maintain the required criteria, the lender will be notified in writing of the deficiencies and allowed a maximum of 30 days to correct them.

(ii) If the lender fails to make the required corrections, the lender's approved status may be revoked by the State Director. The revocation will be a certified letter and will state all of the reasons for the action. Outstanding guaranteed loans shall continue to be the responsibility of the lender.

(6) *Subsequent approval periods.* Renewal of approved lender status is not an automatic process. Lenders desiring to keep their approved lender status must request a subsequent approval at least 60 days prior to the expiration of the approved period. At least 30 days prior to the expiration of the lender's approved status, the State Director will review the lender's performance as an approved lender, solicit the comments of the appropriate county and district office peronnel, and if requested by the lender, determine whether a new 2 year period of approved lender status can be approved. The lender's request to the State Director for renewal will include at least the following:

(i) A brief summary of activity as an approved lender including number and dollar amount of guaranteed loans, the number of applications for guaranteed loans under consideration, and a recap of any loss settlements.

(ii) A current update of the data required for approval of new lenders as outlined in this section and any proposed changes to the last submission of data.

(iii) Request for a new 2 year period of approved lender status.

(7) *Termination of approved lender status.* (i) *Expiration.* Approved lender status will expire at the end of 2 years, unless the lender obtains a new agreement as provided in § 1980.309(c)(6).

(ii) *Revocation.* The State Director shall revoke the approved lender status of any lender who fails to maintain "required criteria" as approved in the application for approved lender status and may revoke the status for a lender failing to meet any optional requirement. Status will also be revoked if the lender violates the terms of Form FmHA 1980–16, "Approved Lender Agreement for Single Family Housing Loans," or fails to properly service any guaranteed loan, or adequately protect the interests of the lender and the Government.

(8) *Approved lender responsibilities.* (i) *Processing.* If upon review of an application the lender concludes that the application can be considered for an FmHA guarantee, the lender will prepare a written statement addressing each of the loan eligibility requirements of this subpart and the basis for the conclusion and place the statement in the applicant's file. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth in this subpart. The

lender will obtain, complete, and submit to FmHA the items required in § 1980.353(e).

(ii) *Servicing.* Approved lenders are fully responsible for servicing and protecting the security for all guaranteed loans.

(iii) *Liquidation.* The lender will complete any liquidation of loans guaranteed under the approved lender provisions. Loss claims will be submitted on Form FmHA 449–30, "Loan Note Guarantee Report of Loss." The loss report will be accompanied by supporting information to outline disposition of all security pledged to secure the loan.

(9) *FmHA responsibility.* The approval official will review each submission and compare the material provided with the requirements in Form FmHA 1980–16 and with the approved forms and methods (see paragraph (e)(3) of this section). The lender will be immediately contacted for information found not to be in accordance with the aproved agreement. The approval official may request additional information, review the lender's complete file or make an independent evaluation of an application, if needed. FmHA will make the final determinations outlined in § 1980.354 and proceed as required by that section. FmHA will provide a response to all approved lender requests for a guarantee within 10 working days of receipt.

(10) *Assure compliance.* FmHA will monitor each approved lender's guaranteed loan files to assure compliance with the requirements of § 1980.331 of this subpart. The approval official will make a complete review of the first five loans developed by an approved lender. FmHA will review the lender file on each guaranteed RH loan at least annually. The FmHA official who conducts these reviews will document the review in the FmHA loan docket. Any discrepancies noted and not resolved will be reported to the State Director.

(11) *Approved Lender Agreement.* The State Director will maintain the Approved Lender Agreement in an operational file for each approved lender. A copy of the Approved Lender Agreement will be placed in each borrower's file.

(d) *Substitution of lenders.* With prior written approval of the FmHA State Director, a new approved lender may be substituted for the original lender provided the new lender agrees to assume all servicing responsibilities. Such substitution may be made without the holder's consent but not without notice to holder(s) by the substituted lender. The State Director will submit the Form FmHA 1980–42, "Notice of Substitution of Lender," for substitution of lenders to the Finance Office.

(e) *Debarment.* See Part 1924 Subpart E of this chapter.

§ 1980.310 Loan purposes.

A loan may be guaranteed if made to an eligible applicant for the following purposes:

(a) To buy, build, rehabilitate, improve, or relocate a dwelling and provide related facilities for:

(1) Use by the applicant as a primary residence; or

(2) A farm owner to provide housing to be occupied by the farm manager, tenants, sharecroppers, or farm laborers.

(b) To refinance secured or unsecured non-FmHA debts that meet the following:

(1) The debt was incurred by the applicant prior to the date the application was filed, and the following conditions can be met:

(i) The debt was incurred for a purpose authorized in this section or is a protective advance by the mortgagee for items covered by the mortgage to be refinanced such as payment of an insurance premium or real estate taxes, or assessments.

(ii) If the debt is secured, it must be a lien against the property which will serve as security for the loan. The promissory note and security instruments for the debt must represent rates and terms that were typical and customary for long term residential financing in the area at the time the debt was incurred. A loan to refinance a qualified long term debt may also include short term debt or unsecured debts incurred for purposes authorized in this section, if necessary to establish a sound repayment ability and will not be a significant portion of the loan.

(iii) Payments on the debt are so seriously delinquent, for reasons beyond the applicant's control, such as loss of employment or income or other similar unforeseen circumstances, that the applicant is likely to lose the dwelling at an early date if the debt is not refinanced.

(iv) The debt is not one owed the lender requesting the guarantee.

(2) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies to make the dwelling decent, safe, and sanitary, an existing lien which meets the requirements of paragraphs (b)(1)(i) and (b)(1)(ii) of this section may be refinanced regardless of delinquency, if necessary for the applicant to have repayment ability for the existing loan and the requested loan for repairs.

(3) Debts or costs incurred after the date of application may be refinanced if the costs were incurred for:

(i) Fees for legal, architectural, and other technical services, or

(ii) Materials, construction, or site acquisition.

(4) Costs in paragraphs (b)(3)(i) and (b)(3)(ii) of this section may be included in the loan when:

(i) The costs were incurred after the applicant filed a written application for a loan but before the loan was closed; and

(ii) The applicant is unable to pay the costs from personal resources and failure to authorize the use of loan funds would jeopardize the applicant's ability to repay the loan; and

(iii) The construction or repair work conforms to that shown on the applicable plans and specifications, and the costs were incurred for authorized loan purposes.

(c) A loan made under paragraph (a)(1) or (a)(2) of this section may be used to:

(1) Purchase in fee title, a minimum adequate site, as outlined in § 1980.316, on which improvements are or will be located, if the applicant does not own an adequate site.

(2) Pay reasonable acquisition cost for a leasehold interest in a minimum adequate site at the time an initial guaranteed loan is made.

(3) Provide an adequate and safe water supply and/or an adequate sewerage facility.

(4) Provide site preparation, including grading, seeding or sodding of lawns, foundation planting, trees, walks, yard fences, and driveways to building sites.

(5) Purchase and install essential equipment in the dwelling including items such as a range, refrigerator, clothes washer, or clothes dryer, if these items are normally sold with dwellings in the area and if purchase of these items is not the primary purpose of the loan.

(6) Provide special design features or equipment when necessary because of physical handicap or disability of the applicant or a member of the household.

(7) Purchase and install approved energy saving measures and approved furnaces and space heaters which use a commonly used, economical, and dependably available type of fuel.

(8) Provide storm cellars and similar protective structures.

(9) Pay incidental expenses such as fees for tax monitoring service, title clearance, loan closing, architectural, surveying, environmental, and other technical services, and incidental expenses specifically authorized for

manufactured housing in Exhibit F of Subpart A of Part 1944 of this chapter.

(10) Pay reasonable connection fees for utilities such as water, sewer, electricity, or gas, which the borrower is required to pay and cannot pay from other funds.

(11) Pay the borrower's share of Social Security taxes for labor hired by the borrower to make planned improvements.

(12) Pay real estate taxes which are due and payable on the building and/or site at the time of closing an initial loan, if this amount is not a substantial part of the loan.

(13) Establish escrow accounts for the payment of real estate taxes and/or insurance premiums.

(14) Provide living area for all members of the applicant's household, including "extended family," as provided in §§ 1980.313(g) and 1980.313(k).

(15) Payment of points within the provisions of § 1980.312(b).

§ 1980.311 Rural area designation.

Rural areas will be determined by the State Director under § 1944.10 of Subpart A of Part 1944 of this chapter.

§ 1980.312 Loan limitations and special provisions.

(a) *Prohibited loan purposes.* Loans will not be guaranteed if loan funds are to be used for:

(1) The purchase of furniture or other personal property except for essential equipment and materials authorized in accordance with § 1980.310, or;

(2) Refinancing FmHA debts, debts owed the lender, or debts on a manufactured home.

(b) *Limitations.* A loan for new or existing housing may not be made for more than 100 percent of the present market value, selling price, or the cost of improvements or construction, whichever is less. However, a loan may not be made for more than 90 percent of the market value or selling price, whichever is less, for dwellings less than one year old when the lender, lender's representative, Department of Housing and Urban Development (HUD), Veterans Administration (VA), or FmHA did not make inspections during construction unless the dwelling is covered by an FmHA approved 10 year warranty plan and the builder provides evidence of good standing under said warranty plan. Not more than 3 discount points may be paid by the borrower unless authorized by the Assistant Administrator, Housing. Discount points paid by the seller are permitted.

(c) *Subdivision clearance and approval—5 or more units.* (1) When housing units are proposed for a new or existing subdivision, the subdivision must be approved by FmHA, HUD, or VA before issuance of a Conditional Commitment for Guarantee. The subdivision must meet the requirements of Subpart E of Part 1901 and Subpart C of Part 1924 of this chapter.

(2) The builder, developer, or packager will submit the necessary information to FmHA in accordance with § 1924.119 of Subpart C of Part 1924 of this chapter to FmHA with a request for subdivision approval.

(3) The State Director will provide the lender a list of approved subdivisions upon the lender's request and will maintain a record of these requests for the purpose of updating the lists as changes occur.

§ 1980.313 Site and building requirements.

(a) *Rural area.* The property on which the loan is made must be located in a designated rural area as defined in § 1944.10 of Subpart A of Part 1944 of this chapter, or in which the designation has changed as provided in § 1944.10(i) of Subpart A of Part 1944 or on a farm. A nonfarm tract to be purchased or improved with loan funds must not be closely associated with farm service buildings.

(b) *Access.* The property must have direct access from a street, road, or driveway that meets the applicable requirements of § 1924.115 (Subdivisions), § 1924.116 (Existing Subdivisions), and § 1924.117 (Scattered Sites) of Subpart C of Part 1924 of this chapter. For properties having access from a driveway, the maintenance cost for the driveway must be considered when determining the applicants repayment ability.

(c) *Site.* A nonfarm tract on which a loan is to be made may not be larger than a minimum adequate site. Minimum adequate sites are:

(1) Scattered sites of 1 acre or less.

(2) House sites of 1 acre or less within a subdivision environment without central water or sewer facilities.

(3) Not in excess of one-quarter of an acre in a subdivision with adequate water and sewer, except some variation in individual lots may be permitted to accommodate cul-de-sacs, cluster housing concepts, or other subdivision designs which maximize good land usage.

(d) *Waiver provision.* The State Director may waive the size limits in paragraph (c) of this section on a case by case basis when it is determined that:

(1) Minimum adequate sites are not available in the area, the value of the total site is comparable to the value of a minimum adequate site, and the extra land does not qualify as a minimum adequate site.

(2) Zoning ordinances which require lots in excess of the limits set forth in paragraph (c) of this section were established because additional land is needed to protect the water supply and/or provide an adequate waste disposal system, or the zoning complies with either an established State or National environmental plan or a State law, or

(3) The scattered site or subdivison was approved before May 14, 1987.

(e) *Environmental concerns.* The property must meet the siting and environmental requirements contained in Subpart G of Part 1940 of this chapter.

(f) *Modest house.* Dwellings financed must provide decent, safe, and sanitary housing, be modest in size, design, and cost, and not exceed the housing needs of the applicant's household. Housing needs will be based on the number and composition of the household, along with consideration of special needs, such as facilities for the elderly, disabled, or handicapped.

(g) *Characteristics of new dwellings.* (1) The construction or purchase of a new house shall not exceed what is typical for the current needs of low and moderate income persons in the area or the following, whichever is smaller:

No. of occupants	*Maximum sq. ft.*
1	912
2–3	1008
4–5	1104
6	1248

(2) When justified by the composition of current family members, special needs, or for large families for which a 1248 sq. ft. house is inadequate, a reasonable amount of additional square footage may be added to the dwelling.

(h) *Living area.* Living area or gross floor area, for the purposes of this section, will be measured from the outside walls of the dwelling. Living area will be determined as follows:

(1) *Ranch on slab, crawl space, or basement:* First floor excluding garage or carport, without deduction for any of the contained space.

(2) *Split foyer, bi-level, raised ranch, etc.:* All space without deduction for any of the contained space within that area, except for a basement garage and that portion of the lower level designed and used for utility and storage. Split foyer, bi-level, or raised ranch designs may be

used only when all rooms, including those in the lower level designed as living area, will be needed by the applicant in accordance with paragraph (g) of this section, and will be finished at the time of loan closing.

(3) *Cape Cod:* All of the first floor, and all of the second floor measured to the outside of the knee stud wall, excluding below ground basements. All rooms designed for living area will be needed by the applicant in accordance with paragraph (g) of this section, and finished at the time of loan closing.

(4) *Two-story townhouses—zero lot line:* The area, center to center of party walls, and outside of all exterior walls of all floors, excluding below ground basements.

(i) *Dwelling designs and materials.* FmHA and lenders shall not require the use of any building designs and/or materials which exceed the applicable development standards for new houses or new construction, or the fair quality for site built and modular houses and average quality for manufactured houses as described in Marshall and Swift Residential Cost handbook or any similar guide. However, such designs may be permitted when the costs are comparable to or less than the cost of fair quality material.

(j) *Prohibited features/amenities.* The following design features will not be permitted when financing construction of a dwelling or purchase of a new dwelling:

(1) Garages or carports if not customary in the area;

(2) Garages or carports exceeding 320 square feet;

(3) Nonliving areas such as balconies, decks, and patios;

(4) Dwelling designs which are incompatible with existing site conditions; i.e., raised ranch or split foyer on flat sites, or basements in wet areas;

(5) Den/recreation room;

(7) Fireplaces;

(8) Bay or bow windows;

(9) Components of the house, such as kitchen cabinets, bathroom fixtures, light fixtures, etc., which exceed "fair-quality" as described in Marshall and Swift Residential Cost Handbook or some other similar cost guide, unless the cost of the selected component is comparable to or less than one of "fair quality";

(10) Fences, except:

(i) When needed to provide protection from a potentially dangerous situation; or,

(ii) When customary in the area on zero lot lines, townhouse properties, or on house lots of 6,000 sq. ft. or less, to afford privacy;

(11) Decorative iron work which is not needed as a safety measure;

(12) Dishwashers or other luxury kitchen appliances;

(13) Sliding glass or atrium doors unless:

(i) The State Director determines that these types of doors are customary in other modes of homes in area;

(ii) They will not increase the cost of the house; and,

(14) Vaulted ceilings unless they will not increase the cost of the house;

(k) *Permitted features.* (1) Special design features necessary to accommodate the needs of the elderly, disabled, or handicapped persons.

(2) Energy saving features which exceed FmHA requirements and cost more than 1 percent of the market value of the property and cost effective solar energy systems may be used only after approval by FmHA's State Architect/Engineer and authorization by the State Director. Complex systems, such as active solar space heater or cooling, geothermal, hydropower, wind, and photovoltaic, that could be considered unconventional, must be submitted to the National Office for concurrence prior to authorization by the State Director.

(3) Solid fuel burning devices may be authorized only if the approval official determines and documents that a dependable and economical fuel supply is available. All solid fuel burning devices must comply with Exhibit D, paragraph IV D 2 of Part 1924, Subpart A. To assure compliance and to remove uncertainties regarding safety and efficiency, solid fuel burning devices are authorized only after approval by the local fire official, FmHA State Architect/Engineer and subsequent authorization by the FmHA State Director.

(4) A dwelling for extended families as defined in § 1980.302 may include bedroom area with an exterior entrance and an additional bathroom. This area should be designed in a manner that will not adversely affect the home's potential for resale.

(l) *Existing dwellings.* Applicants should be counseled by the lender regarding the type of housing necessary to meet their current needs. Consideration should be given to the purchase of an existing adequate but modest dwelling. In most cases, the cost of an existing dwelling including necessary repair and renovation, is less than the cost of new construction; however, the cost advantage should not be offset by the cost of utilities and maintenance. Loans will not be made on an existing manufactured home unless it is already financed with an insured Section 502 Rural Housing loan or a guaranteed loan made under this subpart, or is being sold from FmHA inventory. Existing dwellings must:

(1) Be structurally sound, functionally adequate, be in good repair, or placed in good repair with loan funds, and meet the general requirements in Guide 2, Subpart A Part 1924 of this chapter (available in any FmHA office).

(2) Be consistent with program objectives to provide only housing that is modest in size, cost, and design.

(3) Meet the thermal standards required in Exhibit D, paragraph IV B, Subpart A, Part 1924 of this chapter.

(4) Be inspected and certified for adequacy of electrical, plumbing, heat, water, sewerage disposal, and termite inspection. The responsibility for these inspections and certifications will be identified in the sales agreement.

(5) Contain no more than 1400 sq. ft. of living area for households of 2 or more persons, measured in accordance with paragraph (h) of this section, or not more than 1008 sq. ft. of living area for 1 member households unless:

(i) A larger house is needed to meet the needs of the family in accordance with paragraph (g) of this section; or

(ii) The house is being transferred by assumption of an existing guaranteed loan, purchased from FmHA inventory, or transferred from a presently indebted FmHA insured Section 502 Rural Housing loan borrower. In any case, the approval official will determine that the house is typical of modest homes in the area. In all cases, every effort will be made to provide housing which does not exceed the needs of the applicant.

(m) *Design features/amenities in existing dwellings.* Existing dwellings with design features/amenities that add significantly to the value of the dwelling (such as those listed in paragraph (j) of this section) will not be financed unless the cost of the dwelling is no more than the cost of a new dwelling, and FmHA determines that the dwelling with such features is considered modest.

(n) *Repairs.* Any dwelling financed with an FmHA guarantee must be structurally sound, functionally adequate, and placed in good repairs with loan funds. Manufactured homes will not be repaired except for situations involving subsequent loans in connection with a credit sale, transfer or repair of a unit currently financed with a loan guaranteed under this subpart.

(o) *Improvements.* Improvements financed with guaranteed loan funds must be on land in a rural area, which after loan closing, is part of a tract owned by the borrower which complies

with § 1980.313(b), or on an easement appurtenant to such a tract.

(p) *Manufactured homes.* Only units approved by FmHA, purchased through FmHA approved dealer-contractors, may be guaranteed under this subpart. The lender may obtain a list of FmHA approved models and dealer-contractors from any FmHA office in the area served.

(1) Loans may be guaranteed for the following purposes when the security covers both the unit and the lot:

(i) A new unit for a site, owned or purchased by the applicant which meets the requirements and limitations of this section or a leasehold meeting the provisions of § 1980.314 of this subpart.

(ii) Site development work consistent with the requirements of Exhibit J of Subpart A of Part 1924 of this chapter.

(iii) Subsequent loans in accordance with paragraph (n) of this section.

(iv) Transportation and set-up costs for a new unit.

(2) Loans may not be guaranteed for:

(i) An existing unit and site unless it is already financed with a Section 502 Rural Housing insured or guaranteed loan, it is being sold from FmHA inventory, or it is being sold from the lender's inventory provided the lender acquired possession of the unit through a loan guaranteed under this subpart.

(ii) The purchase of a site without also financing the unit.

(iii) Existing debts owed by the applicant/borrower.

(iv) A unit without an affixed certification label indicating the unit was constructed in accordance with the Federal Manufactured Home Construction and Safety Standards.

(v) Alteration or remodeling of the unit when the initial loan is made.

(vi) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, lamps, tables, televisions, radios, stereo sets, and similar items. This does not include items such as wall-to-wall carpeting, refrigerators, ovens, ranges, clothes washers or dryers, heating or cooling equipment, or similar items.

(vii) Any unit not constructed to the FmHA thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

(viii) A unit that at the time of approval of the guarantee would result in more than one person per room. The number of rooms include bedrooms, living room, dining room, kitchen, den, or family room.

(ix) Repairs unless authorized in paragraph (n) of this section.

§ 1980.314 Loans on leasehold interests.

A loan may be guaranteed if made on a leasehold owned or being acquired by the applicant when the lender determines that long-term leasing of homesites is a well established practice and such leaseholds are freely marketable in the area provided the lender determines and certifies to FmHA that:

(a) *Unable to obtain fee title.* The applicant is unable to obtain fee title to the property.

(b) *Unexpired term.* (1) The lease has an unexpired term of at least 50 years from the date of approval. A lease for 25 years with an option to the lessee to renew for an additional 25 years would be considered a 50 year lease.

(2) When a lease is in existence at least one year prior to the date of approval of the guarantee, a housing loan may be guaranteed provided the unexpired term of the lease is at least 50 percent longer than the repayment period of the loan. In no case will the unexpired term of the lease be less than 15 years.

§ 1980.315 Intergovernmental consultation.

When the application involves a loan or loans in a subdivision of 5 or more new dwelling units in which HUD, VA, or FmHA has not previously made, insured, or guaranteed a housing loan, FmHA will see that the requirements of 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities," are complied with. See FmHA Instruction 1940–J (available in any FmHA office).

§ 1980.316 Environmental requirements.

The requirements of Subpart G of Part 1940 of this chapter apply to loan guarantees made under this subpart. Lenders and applicants must cooperate with FmHA in the completion of these requirements. Lenders must become familiar with these requirements so that they can advise applicants and reduce the probability of unacceptable applications being submitted to FmHA. Required environmental reviews will be completed by the appropriate FmHA officials.

§ 1980.317 Equal opportunity and nondiscrimination requirements.

(a) *Compliance.* The lender and borrower are prohibited from discriminating or segregating on account of race, color, religion, sex, age, handicap, marital status, or national origin in connection with the use, occupancy, or sale of housing. The lender and borrower are responsible for seeing that no agent, lessee, or operator so discriminates or segregates. These requirements will be discussed with the applicant or packager, builder, developer, and other parties involved as early in the negotiations as possible. The following are some of the specific responsibilities:

(1) *Executive Order No. 11063.* This prohibits discrimination or segregation when federal financial assistance is involved in the provision, rehabilitation, or operation of housing and related facilities. (E.O. 11063 dated November 20, 1962, 27 FR 11527, 3 CFR, 1959–1963 Comp. p. 652)

(2) *Fair Housing Act.* Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale or rental of dwellings provided in whole or in part with loans guaranteed by the Federal Government; and provides for the filing and handling of complaints and investigations regarding, and enforcement of remedies for violations of, fair housing requirements. (Pub. L. 90–924, 42 U.S.C. 3601 et seq.)

(b) *Reporting.* If there is indication of noncompliance with these requirements, such facts will be reported by the borrower, lender, or FmHA personnel to the Administrator, FmHA or the Director, Equal Opportunity. Complaints and compliance will be handled in accordance with Subpart E of Part 1901 of this chapter.

(c) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, sex, marital status or physical/mental handicap providing the applicant can execute a legal contract. The lender will comply with the requirements of this Act as set forth in the Federal Reserve Board's Regulation implementing this Act. (See 12 CFR Part 202). Such compliance will be accomplished prior to loan closing.

(d) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and nondiscrimination forms and requirements are applicable to certain cases involving construction as indicated. The borrower is responsible for seeing that the requirements of paragraphs (d)(1) through (5) of this section are met:

(1) *Compliance reports.* No prospective contractor or subcontractor will be eligible for a contract or subcontract financed with a guaranteed loan until the contractor has filed all of

the compliance reports required under any previous contracts.

(2) *Equal Opportunity Agreement.* Before loan closing, each borrower whose loan involves a construction contract of more than $10,000 must execute Form FmHA 400–1, "Equal Opportunity Agreement."

(3) *Contract or subcontract in excess of $10,000.* If the contract or a subcontract exceeds $10,000.

(i) The contractor or subcontractor must submit Form FmHA 400–6, "Compliance Statement," before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract. This clause is incorporated in Form FmHA 424–6, "Construction Contract," which may serve as a guide.

(iii) With notification of the contract award, the contractor must receive:

(A) Form FmHA 400–3, "Notice of Contractors and Applicants," signed by the County Supervisor (State Director for B&I) with an attached Equal Employment Opportunity Poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(B) Form AD–424, "Contractor's Affirmative Action Plan for Equal Employment Opportunity Under Executive Order 11246 and Executive Order 11375," if the contractor or subcontractor is subject to the requirements of paragraph (d)(5) of this section.

(4) *One hundred or more employees and contract or subcontract exceeds $10,000.* If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than $10,000.

(i) In addition to meeting the requirements of paragraph (d)(3) of this section, each such contractor or subcontractor must file Standard Form 100, "Equal Employment Opportunity Employer Information Report EEO–1," with the Joint Reporting Committee within 30 days of the contract or subcontract award unless this report has already been submitted within the last 12 months.

(ii) An annual report must be filed on or before March 31, as long as the contractor or subcontractor holds a contract equal to $10,000 or more which is financed with a guaranteed loan. Failure to file timely, complete and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington DC 20006.

(5) *Fifty or more employees and contract or subcontract exceeds $50,000.* If the contract or subcontract is more than $50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (d)(3) of this section, each such contractor or subcontractor must be informed that he must develop a written affirmative action compliance program for each of his establishments and put in on file in each of his personnel offices within 120 days of the commencement of the contract or subcontract. Form AD–425 provides guidelines for the contractor or subcontractor in developing such a program.

(6) *Compliance reviews.* Compliance reviews must be made during construction inspections to determine whether the required posters are displayed, the facilities are not segregated, and there is no evidence of discrimination in employment. Findings of the borrower or lender (when inspections are made) will be shown on Form FmHA 424–12, "Inspection Report." If there is any evidence of non-compliance, the borrower or lender will be made to achieve voluntary compliance. If the effort fails, the Compliance Review Officer will report all the facts in writing to the Administrator, ATTN: Equal Opportunity Officer.

(7) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with FmHA.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by FmHA for good cause shown by the complainant.

§ 1980.318 Flood or mudslide hazard area precautions.

(a) *Project location.* Projects located in special flood or mudslide hazard areas, as designated by the Federal Insurance Administration (FIA) of the Department of Housing and Urban Development may be financed under this Subpart only:

(1) If the community, as a result of such designation by FIA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) If the project location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan in paragraph (a)(1) of this section.

(3) The requirements of Subpart G of Part 1940 of this chapter have been met.

(b) *Flood insurance.* If project is located in a special flood or mudslide hazard area and if flood insurance is available it will be purchased by the borrower prior to loan closing. (See Part 1806 Subpart B of this Chapter.) (FmHA Instruction 426.2).

§ 1980.319 Other Federal, State and local requirements.

In addition to the specific requirements of this Subpart, proposals financed in whole or in part with an FmHA loan or guarantee will be coordinated with all appropriate Federal, State and local Agencies in accordance with the following:

(a) *Compliance with special laws and regulations.* Applicants and/or lenders will be required to comply with any Federal, State or local laws, regulatory commission rules. ordinances, and regulations which are presently in existence or may be later adopted which affect the project including, but not limited to:

(1) Organization and authority to design, construct, develop, operate, and/or maintain the proposed facilities;

(2) Borrowing money, giving security therefor, and raising revenues for the repayment thereof;

(3) Land use zoning;

(4) Health, safety, and sanitation standards;

(5) Protection of the environment and consumer affairs.

(b) *In compliance.* The applicant and/or lender will be in compliance with this section effective with the date of issuance of the Loan Note Guarantee.

§ 1980.320 Interest rate.

The loan shall bear a fixed interest rate agreed upon by the borrower and the lender and must not be more than that being charged by lenders in the area for comparable loans without a guarantee. The lender will charge the same rate on both the guaranteed and non-guaranteed portions of the note. The

interest rate will not exceed any established usury rate. Loan guarantees will not be approved for any loan which provides for a negative amortization of principal.

§ 1980.321 Terms of loan repayment.

(a) *Note.* Principal and interest shall be due and payable as provided in the promissory note. Ordinarily, the note will provide for monthly payments, however, when the borrower's income is received on a seasonal or annual basis such as from the sale of farm commodities, the lender may structure the payments annually, semi-annually, or quarterly as appropriate.

(b) *Maximum term.* The maximum term for final maturity shall not exceed thirty (30) years from the date of the note. The term may be shorter as necessary to assure the loan is adequately secured.

§ 1980.322 Loan guarantee limits.

(a) Guarantees for Single Family Housing Loans may be up to 90 percent. The maximum loss covered by the Loan Note Guarantee can never exceed the lesser of:

(1) The percentage of guarantee of the principal and interest indebtedness as evidenced by said note(s) or assumption agreement(s), any loan subsidy due, and 90 percent of the principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or

(2) The percentage of guarantee of the principal and interest advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy). FmHA will inform the lender and applicant of a decision to issue a guarantee for less than the amount proposed by the lender and applicant and the reasons therefor using Form FmHA 1980–18, "Conditional Commitment for Single Family Housing Loan Guarantee."

(b) FmHA will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Collateral.* Collateral for the loan.

(2) *Financial condition.* Financial condition of applicant, if appropriate.

(3) *Lender's exposure.* The lender's exposure after the loan.

(i) Net worth, and

(ii) Debt to income ratio.

§ 1980.323 Guarantee fee.

The lender will pay a non-refundable fee of one percent of the principal loan amount multiplied by the percent of the guarantee to FmHA at the time the Loan Note Guarantee is issued. The fee may be passed on to the borrower.

§ 1980.324 Charges and fees by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.

(b) *Late payment charges.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late charges may be made only if:

(1) *Routine.* They are routinely made by the lender in similar types of loan transactions.

(2) *Payments received.* Payments have not been received within the customary time frame allowed by the lender. The term "payment received" means that the payment in cash, check, money order, or similar medium has been received by the lender at its main office, branch office, or other designated place of payment.

(3) *Calculating charges.* The lender agrees with the applicant in writing that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

§ 1980.325 Transactions which will not be guaranteed.

(a) *Lease payments.* Lease payments will not be guaranteed.

(b) *Loans made by other Federal agencies.* Loans made by other Federal agencies will not be guaranteed. This does not preclude loans made by the Federal Land Bank or the Bank of Cooperatives.

(c) *Tax-exempt obligations.* FmHA will not guarantee any loan made with the proceeds of any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended. Funds generated through the issuance of tax exempt obligations may not be used to purchase the guaranteed portion of any FmHA guaranteed loan nor may an FmHA guaranteed loan serve as collateral for a tax-exempt issue.

§§ 1980.326 through 1980.329 [Reserved]

§ 1980.330 Applicant equity requirements.

For new or existing dwellings, the amount of the down payment will be negotiated by the lender and the applicant. A loan to buy or build a dwelling may be made up to the appraised market value of the security less the unpaid principal balance and past-due interest of any other liens. A loan will be limited to 90 percent of the market value of the security for any dwelling less than one year old when approved construction inspections were not made unless the dwelling is covered by an FmHA approved insured 10 year warranty plan. (See § 1980.341(b) for construction inspection requirements.)

§ 1980.331 Collateral.

(a) *General.* The entire loan must be secured by a first lien, or a second lien in the case of a repair loan, on the housing being financed and the lender will maintain this lien priority. The lender is responsible for assurance that proper and adequate security is obtained, maintained in existence, and of record to protect the interests of the lender, holder, and FmHA.

(b) *Third party liens, suits pending, etc.* Among other things in obtaining the required security, it is necessary to ascertain that there are no claims or liens against the security property or the borrower, and that there are no suits pending or anticipated that would affect the security property or the borrower.

(c) *All collateral must secure the entire loan.* All collateral must secure the entire loan unless it is legally impossible as in some homestead cases. The lender will not take separate collateral, including but not limited to mortgage insurance, to secure that portion of the loan or loss not covered by the guarantee.

§ 1980.332 [Reserved]

§ 1980.333 Promissory notes and security instruments.

The lender may use its own forms of promissory notes, real estate mortgages, including deeds of trust and similar instruments, and security agreements provided there are no provisions that are in conflict or otherwise inconsistent with the provisions of this subpart. The lender is responsible for determining that the security instruments are adequate.

§ 1980.334 Appraisal of property serving as collateral.

(a) *Qualified appraiser.* The lender is responsible for seeing that the property that will serve as security for the loan is appraised by a qualified appraiser having the necessary qualifications and experience to make real estate appraisals. A qualified appraiser must hold a designation from a professional appraisal organization that requires testing, continuing education, and experience as a condition designation. The appraisal will be the appraiser's opinion regarding the market value of the collateral.

(b) *Appraisal report.* Appraisals must be done using the Uniform Residential

Appraisal Report form (URAR). The lender will submit the completed appraisal report, covering any property that is to serve as security, to FmHA as an enclosure with the application. The appraisal will be reviewed by a qualified FmHA staff person as a part of the determination whether to issue a conditional commitment for guarantee.

§§ 1980.340 through 1980.339 [Reserved]

§ 1980.335 Acquisition, construction, development, and cost overruns.

(a) *Acquisition of property.* The lender is responsible for seeing that any property to be acquired with loan funds is acquired as planned and that the required security is obtained. The lender is also responsible for seeing that termite inspections are obtained if required in the area when an existing dwelling is financed.

(b) *Construction or development.* The lender and borrower are responsible for seeing that the loan purposes are accomplished and loan funds are properly utilized. This includes, but is not limited to seeing that:

(1) Subparts A and C of Part 1924 of this chapter are used as a guide for planning and performing construction and other development work.

(2) Applicable laws, ordinances, codes, and regulations are complied with.

(3) Drawings, specifications, and estimates are adequate.

(4) Adequate water, electric, heating, waste disposal, and other necessary utilities and facilities are obtained.

(5) Construction or development contracts contain adequate provisions for the undertaking and are properly awarded and executed, and contractors are bonded when the lender determines that bonding is necessary.

(6) Equal opportunity and nondiscrimination requirements are met. See § 1980.317 of this subpart.

(7) Construction and development are performed expeditiously and properly, including inspections of sites and construction or development in various stages of completion to determine that work and material conform with the approved drawings and specifications and any other requirements.

(8) Periodic or partial payments for construction or development work are limited to a reasonable percentage as determined by the lender of the actual value of work and material in place.

(9) Final payment is made only after final inspection has been made and the construction or development has been found proper in all respects.

(10) A builder's warranty is issued when new construction, repair, or rehabilitation is involved, which provides for at least one year's warranty from the date of completion or acceptance of the work.

(11) No claims or liens exist against the borrower or the security property.

(c) *Overruns in development costs.* When it is determined that there will be an overrun the lender and borrower will, with the advice of FmHA, determine how the overrun costs will be met.

(1) *Minor changes.* Minor changes in the project which do not affect the approved loan purposes, increase the cost, or adversely affect the objectives or soundness of the loan may be approved by the borrower and lender. If any line item as reflected in the use of proceeds is changed 10 percent or less and the total loan remains the same, the lender may approve the change.

(2) *Major changes.* If changes cannot be handled under paragraph (c)(1) of this section, the lender and borrower, with the advice of FmHA, will determine how the change or overrun can be met. FmHA will determine and advise the lender in writing whether the loan can still be guaranteed. The FmHA approval official may approve cost overruns and revisions on all loans. The loan may never exceed the limitations specified in § 1980.311.

(3) *Revision of loan amounts.* When it is necessary to increase the amount of the loan guarantee as a result of an overrun in cost, FmHA will prepare and submit Form 1940–1, "Request for Obligation of Funds," to the Finance Office for the new amount of any increased loan. The original obligation must be cancelled using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."

§ 1980.341 Inspections of construction and compliance reviews.

(a) *Qualified inspectors.* Inspections will be made during construction by a qualified construction inspector approved by the lender. In connection with inspections of construction, equal opportunity and nondiscrimination compliance reviews will be made as required by § 1980.317 of this subpart.

(b) *Required inspections.* The lender will see that the following three inspections are made in addition to any additional inspections the lender deems appropriate.

(1) When footings and foundations are ready to be placed.

(2) When shell is closed in but plumbing, electrical, and mechanical work are still exposed.

(3) When construction is completed, prior to occupancy.

§§ 1980.342 through 1980.349 [Reserved]

§ 1980.350 Applicant eligibility requirements for a loan.

The lender will determine that the applicant meets all of the following requirements:

(a) An applicant is eligible for a loan guarantee only if the following requirements are met:

(1) The adjusted annual income as defined in § 1980.352 of this subpart at time of loan approval does not exceed the applicable income limit in Exhibit C of this subpart (available in any FmHA office).

(2) Repayment ability is demonstrated in the following manner:

(i) The applicant has adequate and dependably available income. The determination of income dependability will include consideration of the applicant's past history of annual income and/or the history of the typical annual income of others in the area with similar types of employment. Such income should be sufficient to meet living expenses, pay taxes, insurance and maintenance costs, and to make required payments on all obligations including the Section 502 loan; or

(ii) The applicant obtains a cosigner with dependably available income which will be sufficient to repay the loan. The cosigner must be an individual but may not be a member of the applicant's household.

(b) Applicants applying who do not meet the requirements of paragraph (a)(2) of this section will be considered ineligible unless another adult(s) in the household has adequate income and wishes to join in the application as a co-applicant. The combined incomes then may be considered in determining repayment ability.

(c) *Other Federal debts.* The applicant is not delinquent on any tax and non-tax debts and there are no judgment liens against the applicant's property for a debt owed to the Federal Government.

(d) Qualify as one of the following:

(1) A person who does not own a dwelling, or owns a dwelling which is not structurally sound, functionally adequate, or large enough to accommodate the needs of the applicant, or

(2) A farmowner without decent, safe and sanitary housing for the farmowner's own use or for the use of farm tenants, sharecroppers, farm laborers, or farm manager.

(e) Be without sufficient resources to provide the necessary housing or related facilities, and be unable to secure the necessary credit from other sources upon terms and conditions which the

applicant could reasonably be expected to fulfill.

(f) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, or a noncitizen who resides in one of the foregoing areas after being legally admitted for permanent residence or on indefinite parole.

(g) Possess legal capacity to incur the loan obligation, and have reached the legal age of majority in the State, or have had the disability of minority removed by court action.

(h) Have the potential ability to personally occupy the home on a permanent basis, if the loan is to provide housing for the applicant's own use. To illustrate, because of the probability of their being transferred or moving after graduation, military personnel on active duty and full-time students will not be granted loans unless:

(1) The applicant, if military personnel, will be discharged at an early date (usually within one year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge, and

(2) The applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation or discharge, and

(3) An adult member of the household will be available to make inspections if the home is being constructed and to sign checks for work performed.

(i) Have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due. The following *will not* indicate an unacceptable credit history:

(1) "No history" of credit transactions by the applicant.

(2) Bankruptcies, foreclosures, satisfied judgments, or delinquent payment records which occurred more than 36 months before the application if no recent similar situations have occurred.

(3) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(4) Any bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature, were beyond the applicant's control and have been removed. Examples: loss of job; delay or reduction in government benefits, or other loss of income; increased expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(j) Meet the following conditions when the applicant previously had an FmHA loan:

(1) If, within the previous two years, the applicant had a Section 502 RH loan disposed of through a sale or transfer, the County Supervisor must determine that the dwelling was inadequate to meet the household's needs, the relocation was necessary due to a change of employment and the new property is in a different trade, market, or employment area, the relocation was due to health reasons, or the change in housing needs was due to a legal separation or divorce, or

(2) If the applicant had any previous FmHA debt settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1), Subpart B of Part 1906 of this chapter or by release from personal liability under Subpart A of Part 1955 of this chapter, or debt settlement is being considered, the State Director must determine and document in the running case record that failure to pay the debt was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement or release, other than weather hazards, disasters or price fluctuations, have been or will be removed by making the loan, and

(k) If an applicant has demonstrated inability to carry out the required obligations of the loan by recent failure to maintain a former residence in a habitable and responsible manner, or by unauthorized conversion or alteration of the structure, or by creating a public nuisance in or around a former residence, the State Director:

(1) Must determine that the reasons contributing to such inability have been removed and are not likely to recur, or

(2) If this determination cannot be made, must fully document the evidence of such inability in the case file running record to assure that the determination was not due to any presumed inability based on age, sex, marital status, or any other Equal Credit Opportunity Act (ECOA) prohibited basis, specifically addressing the evidence supporting the determination in any rejection letter.

§ 1980.351 Annual income.

Annual income will be determined as follows and thoroughly documented in the case file running record:

(a) Current verified income, either part-time or full-time, received by the applicant and all adult members of the household including the spouse is derived by multiplying:

(1) An hourly wage by 2080 hours (for part-time employment use anticipated annual hours); or

(2) A weekly wage by 52 weeks; or

(3) A biweekly wage by 26 weeks; or

(4) A monthly wage by 12 months.

(b) If the spouse or any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person(s) involved sign a statement that the person(s) is not presently employed and does not intend to resume employment in the foreseeable future. The statement will be filed in the applicant/borrower's case file.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation will be computed as the estimated annual amount of such income for the ensuing 12 months. Historical data based on the past 12 months may be used if a determination of expected income cannot logically be made.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The *net* income from operation of a farm, business, or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of prinicipal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by Internal Revenue Service (IRS) regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "0" in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation actually claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1944.2(n) of Subpart A of Part 1944 of this chapter, in excess of $5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic allowances, such as:

(i) Alimony and/or child support awarded in a divorce decree or separation agreement, unless the payments are not received and a reasonable effort has been made to collect them through the official entity responsible for enforcing such payments and they are not received as ordered; or

(ii) Regular gifts or contributions from someone who is not a member of the household.

(8) Any earned income tax credit to the extent it exceeds income tax liability.

(9) Any amount of educational grants or scholarships or Veteran's Administration benefits available for subsistence after deducting expenses for tuition, fees, books, and equipment.

(10) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or spouse, whether or not that family member lives in the unit.

(11) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 6 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following *are not* included in annual income but will be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse may never be considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard, or worker's compensation policies, and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships or veteran's payments, which are not used for above purposes and are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Payments to volunteers under the Domestic Volunteer Service Act of 1973, including but not limited to:

(i) National Volunteer Antipoverty Programs which include VISTA, Peace Corps, Service Learning Program and Special Volunteer Programs.

(ii) National Older American Volunteer Programs for persons age 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Programs to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).

(10) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(11) Payments received under the Alaska Native Claims Settlement Act. (A more detailed explanation will be provided by State Supplement for Alaska.)

(12) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.

(13) Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.

(14) Payments received from the Job Training Partnership Act.

(15) Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

(16) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an Indian tribe by the Secretary of Interior.

(17) Payments received from programs funded under Title V of the Older Americans Act of 1965.

(18) Any funds, other than those listed in paragraph (e) of this section, which a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled.

(f) Income of live-in aides who are not relatives of the applicant or members of the household will not be counted in calculating annual income and will not be considered in determination of repayment ability.

§ 1980.352 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1980.351 less the following:

(a) A deduction of $480 for each member of the family residing in the household, other than the applicant, spouse, or co-applicant, who is:

(1) Under 18 years of age; or

(2) Eighteen years of age or older and is disabled or handicapped as defined in § 1980.302; or

(3) A full-time student aged 18 or older.

(b) A deduction of $400 for any elderly family as defined in § 1980.302.

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services

and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family as defined in § 1980.302. This includes medical expenses for any household member the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of home nursing care, monthly payments on accumulated major medical bills, and cost of full-time nursing or institutional care which cannot be provided in the home for a member of the household; and

(2) Reasonable attendant care and auxiliary apparatus expenses for each handicapped/disabled member of any household to the extent necessary to enable any member of such household (including such handicapped/disabled member) to be employed.

§ 1980.353 Filing and processing applications.

(a) *Applicant's contact.* Applicants desiring loan assistance as provided in this subpart must file loan applications with an approved lender.

(b) *Loan priorities.* Applications will be considered by FmHA in the order received from approved lenders.

(c) *Veteran preference.* Applications for loan guarantees to veterans, their spouses, or children of deceased servicemen who died during one of the periods described in § 1980.302 of this subpart will be given preference by FmHA.

(d) *Applications.* The lender will submit a request for the guarantee using Form FmHA 1980–21, "Lender's Transmission of Request for Single Family Housing Loan Note Guarantee," and attach the following supplemental information:

(1) An application for a loan on the lender's form, which includes at a minumum all information outlined below:

(i) Name, address, telephone number, statement of current annual family income and expenses, net worth, age, number of persons in the household, and citizenship status of the applicant.

(ii) Amount of loan request.

(iii) Name, address, contact person, and telephone number of the proposed lender.

(iv) Brief description of the housing to be financed.

(v) Anticipated loan rates and terms.

(vi) Statement from the lender that it will not make the loan as requested by the applicant without the proposed guarantee and that the applicant has been advised in writing that the applicant is subject to criminal action if he or she knowingly and willfully gives false information to obtain a federally guaranteed loan.

(vii) Statement of the applicant's present housing circumstances.

(viii) If the applicant is not a United States citizen, evidence of being legally admitted for permanent residence or indefinite parole.

(ix) For statistical purposes only, the applicant's sex, race, and veteran status, when provided by the applicant.

(x) The applicant's social security number.

(2) Architectural or engineering plans and specifications for dwelling and site if new construction or rehabilitation is planned, including a plot plan showing the location of the house and utilities, topography, landscaping, drainage, and other site development such as driveways, sidewalks, curbs, street, etc., and a soils map and foundation design, if applicable.

(3) Cost estimates including forecasts of contingency funds.

(4) Appraisal reports including information about the dwelling location with respect to neighborhood and community services and facilities, business and industrial enterprises, and streets or roads serving the housing.

(5) Credit report obtained by the lender.

(6) Form FmHA 400–1, "Equal Opportunity Agreement," for construction costing more than $10,000.

(7) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agencies having jurisdiction including any pollution control agency.

(8) Proposed loan documents between the borrower and lender.

(9) Evidence of compliance with the Privacy Act of 1974.

(i) Form FmHA 410–9, "Statement Required by the Privacy Act." The lender will furnish the applicant two copies; the applicant will sign both and provide one to the lenders for the loan file.

(ii) Form FmHA 410–10, "Privacy Act Statement to References." If the lender or FmHA desires to obtain information concerning the applicant from any source two copies of Form FmHA 410–10 will be provided, the source will sign both the return one to the lender or FmHA, as approved, for the loan file.

(10) Lender's analysis of loan feasibility.

(11) Written verification of the applicant's household income. Verification of income will be obtained for each adult member of the household from the appropriate source. The verification must be signed by the source of information and be less than 90 days old at the time of loan approval.

(12) A statement for each debt to be refinanced from the lender to be paid showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, amount and frequency of installments, amount of delinquency, unpaid principal, and accrued interest.

(e) *Filing applications.* The requirements of the Right to Financial Privacy Act of 1978 must be met as follows:

(1) Within 3 days of the receipt of a complete application from a lender for a guarantee for a loan, FmHA will forward Form FmHA 410–7, "Notification to Applicant on Use of Financial Information" to the applicant.

(2) FmHA will notify lenders and other financial institutions to which FmHA makes a direct request for financial records. The notification will read as follows:

> I certify that the United States Department of Agriculture, acting through the Farmer's Home Administration, has complied with the applicable provisions of Title XI, Public Law 95–630, in seeking financial information regarding *(applicant)*.
>
> _____
>
> Date
>
> _____
>
> State Director

(3) Under no circumstances may financial information obtained under this Subpart be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Office of Equal Opportunity (OEO)) without express approval of OGC.

§ 1980.354 FmHA evaluation of applications.

FmHA will review the application for completeness and determine whether the borrower is eligible, the proposed loan is for an eligible purpose, there is a

reasonable assurance of repayment ability, and sufficient collateral. FmHA will notify the lender within 10 working days of receipt of a completed application of FmHA's decision.

(a) *Incomplete applications.* Incomplete applications will be returned to the lender with a letter outlining all information necessary to make a determination.

(b) *Denial.* If FmHA determines it is unable to guarantee the loan, the lender will be informed in writing by use of the Form FmHA 449–13, "Denial Letter." Such notification will include the reasons for denial of the guarantee and appropriate appeal or review rights. Only the applicant and the lender may appeal an FmHA decision regarding any issue affecting whether the guarantee will be issued, and this must be done jointly in a written request for an appeal or review. These requests will be handled in accordance with Subpart B of Part 1900 of this chapter.

(c) *Issuance of commitment.* If FmHA is able to guarantee the loan, and adequate funds are available, the approval official will:

(1) Prepare Form FmHA 1940–1, "Request for Obligation of Funds," Form FmHA 1944–2, "Single Family Housing Fund Analysis," and in the case of an initial loan Form FmHA 1980–50," Add, Delete or Change Guaranteed Loan Record."

(2) Prepare a Form FmHA 1980–18 listing all approval requirements and send an original and one copy to the lender provided adequate funds are available. Form FmHA 1980–18 will not be issued until funds have been obligated.

(3) The State Director will prepare Form FmHA 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," in accordance with the FMI.

§ 1980.355 Review of requirements.

Upon the lender's review of the Form FmHA 1980–18, the lender may determine whether to accept the conditions outlined in it.

(a) *Accepting conditions.* Immediately after reviewing the conditions and requirements in the Form FmHA 1980–18 and the options listed on the back of the form, the lender should complete and sign the acceptance or rejection of conditions, and return a copy to the FmHA approval official. If the conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA. The FmHA approval official may negotiate any revisions consistent with this subpart. These alternatives will be considered and the lender will be advised of FmHA's decision. If altered conditions are accepted by FmHA, Form FmHA 1980–18 will be revised as appropriate.

(b) *Cancelling commitment.* If the lender indicates in the acceptance or rejection of conditions that it desires to obtain a loan note guarantee and subsequently decides prior to loan closing that it no longer wants a loan note guarantee, the lender should immediately advise the FmHA approval official. Upon cancellation, the approval official will notify the Finance Office by preparation and submission of the Form FmHA 1940–10.

§§ 1980.356 through 1980.359 [Reserved]

§ 1980.360 Conditions precedent to issuance of the Loan Note Guarantee.

(a) *Lender certification.* Form FmHA 1980–17 will not be issued until the lender certifies to FmHA that:

(1) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee, except those approved in writing by FmHA.

(2) All planned property acquisition has been completed and all development has been substantially completed.

(3) Required insurance coverage is in effect.

(4) Truth in lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been or will be met at the appropriate time.

(6) The loan has been properly closed, and the required security instruments have been obtained.

(7) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and any other exceptions approved in writing by FmHA.

(8) Lien priorities are consistent with the requirements of the Conditional Commitment for Guarantee.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee.

(10) There has been no adverse change in the borrower's financial condition or other adverse change in the borrower situation since the Conditional Commitment for Guarantee was issued by FmHA.

(11) All other requirements of the Conditional Commitment for Guarantee have been met.

(b) *Inspections.* The lender will provide FmHA with a copy of any inspection reports for inspections in accordance with § 1980.341 of this subpart.

(c) *Lender's agreement.* There is a valid approved lender's agreement on file.

(d) *Plans for marketing.* The lender will advise FmHA of its plans to sell or assign any part of the loan.

(e) *Borrower copies.* The lender will see that the borrower is provided the original or copy, as appropriate, of:

(1) Drawings and specifications.

(2) Plot plan.

(3) Truth-in-Lending and Real Estate Settlement Procedure Act disclosure statements.

(4) Builder's warranty.

(5) Deed and security instruments.

(f) *Lender file.* The lender will maintain a file for each guaranteed RH loan containing originals or copies, as appropriate, of all documents pertaining to that loan.

(g) *FmHA review.* The FmHA approval official will review the items submitted by the lender to assure compliance with the conditions of guarantee. The Form FmHA 1980–17 will not be issued before the Finance Office has acknowledged the obligation of funds.

§ 1980.361 Issuance of Loan Note Guarantee and Assignment Guarantee Agreement.

(a) *Loan Note Guarantee and Assignment Guarantee Agreement (Form FmHA 1980–17).* (1) After all requirements have been met, FmHA will execute Form FmHA 1980–17. All original(s) will be provided to the lender and attached to the note(s). A conformed copy with copies of the note(s) will be retained by FmHA.

(2) In the event the lender assigns any portion of the loan to a holder(s) in accordance with this subpart, the lender, holder, and FmHA will execute the assignment portion of the guarantee form and forward Form FmHA 1980–17 to the holder.

(b) *Refusal to execute contract.* If FmHA determines that it cannot execute Form 1980–17 because all requirements have not been met, it will promptly inform the lender of the reasons using Form FmHA 449–13, "Denial Letter," and give the lender a reasonable period to satisfy the objections. FmHA may grant additional time as it considers necessary and reasonable under the circumstances if the lender makes a request within the period allowed. If the objections are satisfied within the time allowed, FmHA will issue the guarantee. Otherwise, the lender will be informed of the appropriate appeal or review rights in

accordance with Subpart B of Part 1900 of this chapter.

(c) *Cancellation of obligations.* If the conditions for the guarantee cannot be met after allowance for the completion of the appeal process, FmHA will prepare and submit Form FmHA 1940–10.

(d) *Reporting loan closing.* The lender will prepare and deliver the Form FmHA 1980–19, "Guaranteed Loan Closing Report," for each loan to be guaranteed and will deliver the guarantee fee to the FmHA approval official who concurrently delivers the Form FmHA 1980–16 after a review to assure completeness. The fee and the original Form FmHA 1980–19 will be submitted to the Finance Office by the FmHA approval official.

§ 1980.362 Lender's sale or assignment of guaranteed portion of the loan.

Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions of Form FmHA 1980–16 and Form FmHA 1980–17. The loan may not be sold if a payment default exists at the time of sale. If the lender knows at the time the application is being prepared that it plans to sell or assign any part of the loan, the lender will provide this information to FmHA.

§§ 1980.363 through 1980.369 [Reserved]

§ 1980.370 Loan servicing.

(a) *Lender responsibilities.* The lender is responsible for servicing the loan under the Form FmHA 1980–17. Loan servicing should be approached as a preventative action rather than a curative action. Prompt follow-up by the lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases.

(b) *FmHA responsibilities.* The State Director:

(1) Must establish an office management system for guaranteed housing loans and monitor the loans for FmHA;

(i) Applications for Loan Guarantees will be maintained using Form FmHA 1905–4, "Application and Processing Card—Individual."

(ii) Form FmHA 1905–5, "Management System Card—Individual (Rural Housing Only)," will be maintained for each borrower.

(2) Assure that the necessary reports and information from the lender are obtained as needed;

(3) Periodically post review guaranteed loans made by lenders to protect FmHA's interest;

(4) May consult with the National Office on any servicing problem and if it cannot be handled at the State level, the file may be forwarded to the National Office with recommendations.

§ 1980.371 Defaults by the borrower.

(a) *Lender responsibilities.* (1) Paragraph VIII of Form FmHA 1980–16 outlines the lender's responsibility in the event of a default.

(2) The lender will arrange a meeting with the borrower to resolve the problem. A memorandum of the meeting including a list of the individuals who attended, a summary of the problem, and proposed solutions will be sent to the State Director to be retained in the loan file.

(b) *FmHA purchase.* (1) FmHA may be required to purchase the guaranteed portion of the loan from the holder in the event of default or servicing problems. See paragraph 8 and 10 of Form FmHA 1980–17.

(2) The State Director will review the material submitted, verify the amounts due the holder(s), and prepare the Form FmHA 1980–37, for each holder.

(3) If FmHA owns any guaranteed portion of the loan, it will be considered in any future report of loss calculations. A record of the purchase by FmHA will be maintained in the loan file.

§ 1980.372 Liquidation.

If either the lender or FmHA concludes that liquidation is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, it will notify the other party and the matter will be handled in accordance with paragraph IX of Form FmHA 1980–16.

(a) *Lender responsibility.* The lender is expected to conduct the liquidation in an expeditious manner and in accordance with State Laws. The Lender will provide accounting reports on the liquidation.

(b) *FmHA responsibility.* The State Director will monitor the Lender's liquidation progress. The State Director is responsible for the review and acceptance of the lender's accounting reports and for submitting such reports to the lender when FmHA is conducting the liquidation. If the State Director determines that the liquidation is not proceeding in a manner typical for the area, the State Director will notify the lender that liquidation must be completed within a specified reasonable time; otherwise, the lender's approved status will be revoked.

(c) *Allowable liquidation costs.* In the preparation of a liquidation plan, reasonable liquidation costs (costs similar to those charged for like services in the area) are allowed. Liquidation costs are paid from the sale proceeds of collateral when the lender has conducted the liquidation. Therefore, if liquidation never occurs or is conducted by someone other than the lender, there can be no allowable liquidation costs.

(1) *In-house expenses.* In-house expenses of the lender are not allowable costs under a liquidation plan. These include but are not limited to employee salaries, staff attorneys, travel, and overhead.

(2) *Appraisals.* If an appraisal is made and the fee is shared by FmHA and the lender in accordance with paragraph VIII of Form FmHA 1980–16, this is an allowable liquidation cost. The lender and FmHA recover this cost from the first collateral sales proceeds received, each taking half of the proceeds until the actual cost is fully recovered. Form FmHA 1980–46, "Report of Liquidation Expenses," will be completed by the State Director in accordance with the FMI.

(d) *Final loss payment.* See paragraph VIII of Form FmHA 1980–16. Final loss payments will be made within the 60 days required but only after an audit to assure all collateral has been accounted for. The State Director is responsible for seeing that the review is conducted and resolved in a timely manner and that the final payment is made as required. The State Director may request National Office assistance in conducting any review. If a lender's final loss claim is either denied or reduced, the lender will be notified of all of the reasons for the action within 10 days of FmHA's decision and its opportunity to appeal the decision as set forth in Subpart B of Part 1900 of this chapter.

§ 1980.373 Protective advances.

See paragraph X of Form FmHA 1980–16. Protective advances are not intended to be made in lieu of additional loans. Prior approval by the FmHA is required for all advances in excess of $500 except for advances for the sole purpose of paying delinquent taxes and other assessments which constitute a prior lien. FmHA will consider the following when approving a protective advance.

(a) *Total amount.* The total amount of outstanding advances, the amount of those for which approval is required, the outstanding loan balance, whether the account is current, and the extent of any delinquencies.

(b) *Ability to pay.* The borrower's ability to pay the remaining loan balance and future advances in accordance with the repayment schedule.

§ 1980.374 Additional loans or advances.

The lender will not make additional loans to the borrower without FmHA consent even though such loans will not be guaranteed. Any additional loan that is to be guaranteed will meet the requirements of this subpart. Additional loans for necessary repairs or other authorized purposes necessary to enable the borrower to retain a safe, decent, and sanitary dwelling may be made even though the area has changed from rural to non-rural over the life of the initial loan. FmHA may approve additional loans or advances provided the approval official determines that there will be no adverse changes in the borrower's financial condition and that the loan or advance is not likely to adversely affect the collateral of the guaranteed loan.

§§ 1980.375 through 1980.379 [Reserved]

§ 1980.380 Transfer and assumptions—general.

Transfers to and assumptions by eligible and ineligible transferees are covered in more detail in §§ 1980.381 and 1980.382 respectively; however, the following apply to all transfers and assumptions:

(a) *FmHA approval.* All transfers and assumptions must be approved by the FmHA State Director in writing.

(b) *Eligibility preference.* Preference will be given to applicants who meet FmHA's eligibility requirements for the loan.

(c) *Total debt.* A transfer to and assumption by eligible or ineligible applicants may not be made for less than the total remaining indebtedness.

(d) *Release of liability.* The lender may release the transferor of liability upon the written concurrence of FmHA.

(e) *Forms and case numbers.* The assumption may be made on the lender's assumption agreement form. The assumption agreement must contain the FmHA case numbers of the transferor and the transferee.

(f) *Notations and notices.* The lender will notify FmHA whether the loan and security can be properly transferred, the conveyance instruments filed, registered, or recorded, as appropriate, and whether the borrower is to be released of liability. Upon completion of the transfer, the lender will provide FmHA a copy of the transfer and assumption agreement. The lender is responsible for notation of the transfer on the Loan Note Guarantee.

(g) *Holder not consulted.* The holder need not be consulted on a transfer and assumption unless the terms of the loan are changed. The lender must give the holder notice of the transfer and that future payments will be made under a different name and case number.

(h) *Loan Note Guarantee.* The existing Loan Note Guarantee will continue to be in effect when there is no change in terms. The lender will notify the holder, if any, of the changes. If the assumption involves a change in terms a new Loan Note Guarantee will be issued and the lender will surrender the existing Loan Note Guarantee.

(i) *Lender's application to FmHA.* The lender will submit the items outlined in paragraph (d) of § 1980.353, in addition to items required in this section and § 1980.381 or § 1980.382 as appropriate.

(j) *FmHA responsibility.* The FmHA approval official may approve any transfer and assumption and corresponding release of liability of the transferor consistent with this subpart and notify the lender of the decision and the appropriate appeal rights. A copy of the assumption agreement will be maintained in the FmHA loan file.

§ 1980.381 Eligible transferee.

An "eligible transferee" is one who meets the eligibility requirements of this subpart and includes situations involving transfers of housing in an area that has ceased to be rural.

(a) *Changes in the promissory note or security instrument.* If the assumption will result in changes in the repayment schedule or the interest rate, the changes must be approved by the holder. The present debtors will also approve the changes when the lender determines they are not to be released of liability. Any changes in rates and terms must not exceed rates and terms allowed for new loans under this subpart. The term of the loan may cover a period of up to 30 years from the date of transfer. The lender's request for approval to FmHA will be accompanied by:

(1) An explanation of the reasons for the proposed change in the rates and terms.

(2) A statement that the lender's determinations required by paragraph (b) of this section can be made.

(3) The lender's recommendation on release of personal liability of the transferors.

(b) *Determinations by the lender.* Before the transfer and assumption can be approved, the lender must determine that all of the following conditions can be met:

(1) The transferee is an eligible applicant.

(2) The transferee will acquire all of the property securing the guaranteed loan balance.

(3) The transfer could not be made without the continuation of the loan guarantee.

(4) The market value of the security property being acquired by the transferee is at least equal to the secured indebtedness against it.

(5) The priority of the existing lien securing the guaranteed loan will be maintained or improved.

(6) Proper hazard insurance will be obtained.

(7) The transfer can be properly closed and the conveyance instruments will be filed, registered, or recorded, as appropriate and legally permissible.

(c) *Closing the transfer and assumption.* As soon as the lender has obtained FmHA approval, the lender may proceed with closing the transaction. The closing will include, but will not be limited to, the proper execution and delivery of the conveyance and assumption documents, compliance with any legal requirements, and actions necessary to perfect the transfer and the required lien priority.

(d) *Material furnished to FmHA after closing.* Immediately after closing, the lender will furnish to FmHA:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) Any changes made in the provisions of the promissory note or security instruments.

(ii) That all conditions and requirements of paragraph (b) of this section have been met.

(iii) That the required insertions have been made per § 1980.380(h).

(iv) Whether the present debtors have been released of liability or have signed an agreement of continued liability.

(e) *FmHA responsibility.* (1) *Notification of lender.* The FmHA approval official will review the proposed transfer and notify the lender of the decision in writing. The request for transfer will be treated as an application for guaranteed loan assistance and will be handled in accordance with § 1980.353. The lender may proceed with the transfer upon obtaining FmHA approval.

(2) *Review of closing documents.* The FmHA review official is responsible for the review and approval of the executed assumption agreement and the original statement required from the lender in paragraph (d) of this section.

(i) *Errors and omissions.* If upon review of the conformed documents FmHA finds any errors or omissions, the review official will return the defective material to the lender so that errors and omissions may be corrected. If the original assumption agreement contains

the same defects, it will be necessary to have the assuming parties and the lender initial the changes. If the transferors remain liable for the debt, they will also need to initial the changes.

(ii) *Notification of Finance Office.* If the material is in order, or upon correction per § 1980.381(e)(2)(i), the review official will complete and submit Form FmHA 1980–7, "Notice of Transfer and Assumption of a Guarantee Loan," Form FmHA 1980–51, "Add, Change, or Delete Guaranteed Loan Record," and for new borrowers, Form FmHA 1980–50.

§ 1980.382 Ineligible transferee.

An "ineligible transferee" is one that does not meet the eligibility requirements of this regulation.

(a) *Rates and terms.* The interest rate may be any legal rate agreed to by the lender and the assuming parties provided the rate does not exceed rates charged by lenders for comparable loans in the area as explained more fully in § 1980.320. The terms in these cases will not exceed 10 years except FmHA may authorize the lender to go up to 15 years provided:

(1) The present debtors are not released from personal liability,

(2) The lender makes a written request for the longer term, and;

(3) FmHA makes a written determination that a period longer than 10 years is necessary to protect the financial interests of FmHA as guarantor.

(b) *Continued liability of transferors.* Unless the terms of the assumption agreement change the terms of the promissory note, the transferors will be required to sign an agreement of continued liability if the terms of the repayment period on the guaranteed loan are more than 5 years.

(c) *Determinations by lender.* Before the transfer and assumption are consummated, the lender must obtain the approval of the holders and FmHA. As a basis for obtaining FmHA approval, the lender must submit the following to FmHA:

(1) A completed but unexecuted copy of the transfer document,

(2) A statement that the following determinations have been made:

(i) The transferee is not an eligible applicant,

(ii) The proposed transfer and assumption appear to be in the best method of protecting the financial interests of FmHA and the lender,

(iii) The market value of the security is equal to or exceeds the unpaid balance of the guaranteed loan plus any prior liens, or the financial situation of the transferee is such that any difference could be readily collected,

(iv) The determinations of § 1980.381 (b)(2), (b)(5), (b)(6), and (b)(7) are made,

(v) That the proposed term of the assumption is necessary and meets the requirements of paragraph (a) of this section.

(d) *Closing the transfer and assumption.* As soon as the lender has obtained FmHA approval, the lender may proceed with closing the transaction. The closing will include, but will not be limited to, the proper execution and delivery of the conveyance and assumption documents, compliance with any legal requirements, and actions necessary to perfect the transfer and the required lien priority.

(e) *Material furnished to FmHA after closing.* Immediately after closing, the lender will furnish to FmHA:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) That all conditions and requirements of the FmHA approval letter have been met.

(ii) That the required insertions have been made per § 1980.380(h).

(iii) Whether the present debtors have been released of liability or have signed an agreement of continued liability.

(f) *FmHA responsibility.* (1) *Notification of lender.* The approval official will review the lender's determinations and approve/disapprove the lender's request. A letter will be sent outlining FmHA's decision. If the assumption term exceeds the 5 year limitation in paragraph (b) of this section, the letter will contain FmHA's express determination that the term is necessary to protect the financial interest of FmHA as guarantor. If FmHA determines that it cannot approve the proposed transaction, it will inform the lender in writing of the reasons and the appropriate appeal rights.

(2) *Review of closing documents.* The FmHA review official is responsible for the review and approval of the executed assumption agreement and the original statement required from the lender in paragraph (d) of this section.

(i) *Errors and omissions.* If upon review of the conformed documents FmHA finds any errors or omissions, the review official will return the defective material to the lender so that errors and omissions may be corrected. If the original assumption agreement contains the same defects, it will be necessary to have the assuming parties and the lender initial the changes. If the transferors remain liable for the debt, they will also need to initial the changes.

(ii) *Notification of Finance Office.* If the material is in order, or upon correction per § 1980.381(e)(2)(i), the review official will complete and submit the appropriate information to the Finance Office.

§§ 1980.383 through 1980.398 [Reserved]

§ 1980.399 Appeals.

Only the borrower, lender and/or holder can appeal an FmHA decision. The borrower and lender must jointly execute the written request for review of an alleged adverse decision made by out in Subpart B of Part 1900 of this chapter. A decision by a lender adverse to the interest of the borrower, is not a decision by FmHA, whether or not concurred in by FmHA.

§ 1980.400 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0078.

Exhibits to Subpart D

Exhibit A—List of Forms Used in FmHA Guaranteed Loan Instruction 1980–D

Note.—This exhibit is not published in the **Federal Register** or the Code of Federal Regulations. It is available in any FmHA Office.

Exhibit B—Form FmHA 1980–21, Lender's Transmission of Request for Single Family Housing Loan Guarantee

Lender Name _____
Lender ID No. _____
Address _____

TO: FmHA

We submit the following request for FmHA loan guarantee:

Applicant's Name _____
Social Security No. _____
Address _____
Telephone number _____

1. Copy of loan application with the following information; statement of current annual family income and expenses, net worth, age, number of persons in the household, and citizenship status of the applicant, the applicant's sex, race, and veteran status.

2. We propose to loan $____ for _____ at ____% per annum with payments of $____ per _____. Loan funds will be used for the following purpose(s):

Purpose	Amount
Total Loan	

3. You may contact *(contact person)* of our office at *(telephone number)* for any other information on this application.

4. We attach a brief description of the housing to be financed including any drawings and specifications for: (check all that apply)

____ construction
____ major repairs.

5. Description of all security property and copy of the appraisal report.

6. Copy of applicant's credit report.

7. Form FmHA 400–1, "Equal Opportunity Agreement," if construction costing more than $10,000 is planned.

8. Proposed loan documents between the borrower and lender.

9. Form FmHA 410–9, "Statement Required by the Privacy Act."

10. Form FmHA 410–10, "Privacy Act Statement to References."

11. Lender's analysis of loan feasibility.

12. Written verification of the applicant's household income.

13. A statement for each debt to be refinanced from the lender to be paid showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, amount and frequency of installments, amount of delinquency, unpaid principal, and accrued interest.

14. In order to induce the Farmers Home Administration to issue the requested guarantee, we certify that:

a. We would not be able to make this loan without the proposed guarantee;

b. The applicant has been advised in writing that the applicant is subject to criminal action if he or she knowingly and willfully gives false information to obtain a federally guaranteed loan;

c. We have reviewed the applicant's loan proposal, and find that

i. The dwelling to be financed is modest in size, cost, and design, and located in a rural area;

ii. If new construction or rehabilitation; the plans and specifications have been properly certified as required in 7 CFR Part 1924, Subpart A;

iii. The proper building permits, if applicable and any necessary certifications and recommendations of appropriate regulatory or other agencies having jurisdiction including any pollution control agency have been or will be obtained before any loan funds are dispersed; and

d. There is an approved lender agreement on file;

e. The applicant is a United States citizen or a legally admitted for permanent residence or indefinite parole.

15. The proposed percentages of Guarantee is ____% of the principal and interest.

16. An escrow account is required for: (check all that apply)

____ taxes
____ insurance
____ other

_____

Date

_____

Lender

Exhibit C—Income Levels

Note.—This exhibit is not published in the Federal Register or the Code of Federal Regulations. It is available in any FmHA Office.

Exhibit D—Form FmHA 1980–16, Approved Lender Agreement for Guaranteed Single Family Housing Loans

_____

_____

(Lender) of _____ designated as an Approved Lender for the purpose of processing and requesting Loan Note Guarantee(s) authorized by Exhibit A to 7 CFR Part 1980, Subpart D. This agreement does not apply to loan types other than those specifically named in this agreement. This agreement applies to the following offices of the Lender:

—. _____

The United States of America, acting through the Farmer's Home Administration (FmHA), agrees to enter into Loan Note Guarantees with the lender as may be issued pursuant to the regulations for Rural Housing loans and to participate in a percentage of any loss on any such loans not to exceed the amount established in the particular loan note guarantee as to the percentage of the amount of the principal and any accrued interest. The terms of any Loan Note Guarantee are controlling. The lender enters into this agreement as a condition for obtaining the guarantee.

The Parties Agree:

I. That the maximum loss covered under the Loan Note Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any Rural Housing loan guaranteed.

II. Lender's Sale or Assignment of the Guaranteed Loan.

A. The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or borrower or members of their immediate families. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. Assignment. Assign all or part of the guaranteed portion of any loan to one or more Holders by using the assignment portion of Form FmHA 1980–17, "Loan Note Guarantee and Assignment Guarantee Agreement." Holder(s), upon written notice Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold under Form FmHA 1980–17. Upon such notification, the assignee shall succeed to all rights and obligations of the Holder(s) under Form FmHA 1980–17.

2. Multinote System. When this option is selected by the Lender, upon disposition the Holder will receive one of the borrower's executed notes and Form FmHA 1980–17, "Loan Note Guarantee and Assignment Guarantee Agreement," attached to the borrower's executed note. However, all rights under the security instruments (including personal guarantees) will remain with Lender and in all cases insure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 1980–17 for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then outstanding for the original Loan Note Guarantee which will be cancelled by FmHA.

(3) Participations.

(a) The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another lender.

(b) The Lender may obtain participation (a sale of an interest in the loan in which the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation) of only the unguaranteed portion of the loan in excess of the 10 percent minimum under its normal operating procedures. Participation with a lender by any entity does not make that entity a lender or a holder.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall upon the sale succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all of the obligations under and the Loan Note Guarantee, this Agreement, the FmHA program regulations found in Title 7 CFR Part 1980 Subpart D, and to future FmHA program regulations not inconsistent with the express provisions of this Agreement.

III. The Lender agrees that loan funds will be used for the purposes authorized in 7 CFR Part 1980 Subpart D as set forth in Form FmHA 1980–18, "Conditional Commitment for Rural Housing Loan Guarantee," for the particular loan.

IV. The Lender certifies that none of its officers or directors, stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System institutions with direct lending authority that have normal stockshare requirements for participating) or other owners has, or will have, a substantial financial interest in any guaranteed loan Borrower. The Lender certifies that neither any guaranteed loan borrower nor its officers or directors, stockholders or other owners have a substantial financial interest in the Lender. If the borrower is a member of the board of directors of a Farm Credit Bank or other Farm Credit System institution with direct lending authority the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

V. The Lender will certify to FmHA, prior to the issuance of a Loan Note Guarantee for each loan, that there has been no adverse change(s) in the Borrower's financial condition not any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to the issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the borrower not more than 90 days old at the time of certification.

VI. The Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Loan Note Guarantee is issued.

VII. Servicing.

A. The Lender will service the entire loan and will remain mortgagee or the secured party of record, notwithstanding the fact that another may hold a portion of the loan. Lender may charge Holder a servicing fee. The entire loan will be secured by the same security with equal priority for the guaranteed and the unguaranteed portions of the loan. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The Lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided in this Agreement.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and the FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants, loan agreement, security instruments, and any supplemental agreements and notifying FmHA and the borrower in writing of any violations.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only upon the agreement of the Lender and the Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspection of the collateral as often as necessary to properly service the loan.

4. Assurance that adequate insurance, including hazard insurance, is maintained with a loss payable clause in favor of the lender as the mortgagee or the secured party.

5. Assuring that:

a. Taxes, assessments, or ground rents against or affecting collateral are paid;

b. the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

c. insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with written approval of FmHA;

d. proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as furniture, equipment, or fixtures may be used to acquire property of a similar nature without written concurrence of FmHA;

e. The borrower complies with all laws and ordinances applicable to the loan and the collateral.

6. Assuring that if personal guarantees or co-signers are part of the collateral, that financial statements are obtained from such guarantors which are not over 90 days old.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing the lien instruments to obtain or maintain such priorities during the existence of the guarantee by FmHA.

8. Assuring that the borrower obtains marketable title to the collateral.

9. Assuring that the Borrower is not released of liability for any or all of the loan except as provided in FmHA regulations.

VIII. Default by the Borrower.

A. The Lender will notify FmHA when a borrower is thirty (30) days past due on payment or if the borrower is in default. The Lender will notify FmHA of the status of a borrower's default using Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the borrower to resolve the problem. The Lender will advise FmHA in writing of the results of the meeting. Actions taken by the Lender with the written concurrence of FmHA may include but are not limited to the following or any combination thereof (subject to the rights of any holder(s)):

1. Deferral of principal payment.

2. Reamortization of or rescheduling the payments on the loan.

3. Transfer and assumption of the loan.

4. Liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default.

C. The Lender may repurchase the unpaid guaranteed portion of the loan from the Holder in accordance with paragraph 7 of the Loan Note Guarantee and Assignment Guarantee Agreement. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder and FmHA of its decision.

D. If the Lender does not repurchase as provided by paragraph C, FmHA will purchase from the Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest to the date of repurchase within 30 days after written demand to FmHA from the Holder(s) in accordance with paragraph 8 of the Loan Note Guarantee and Assignment Guarantee Agreement.

E. By declining to repurchase from the Holder, the Lender consents to FmHA repurchase and agrees to furnish a current statement certified by an authorized officer of the Lender of the unpaid principal and interest then owed by the borrower on the loan and the amount due the Holder in accordance with paragraph 9 of the Loan Note Guarantee and Assignment Guarantee Agreement.

F. Servicing fees assessed by the Lender to the Holder are collectible only from payment installments received by the Lender from the Borrower in accordance with the Loan Note Guarantee and Assignment Guarantee Agreement. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrowers. No service fee shall be charged FmHA and no such fee is collectible from FmHA.

G. The lender may repurchase the loan for servicing in accordance with paragraph 10 of the Loan Note Guarantee and Assignment Guarantee Agreement.

IX. Liquidation. If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will advise FmHA of the decision and provide certification that all servicing options have been explored and been determined unworkable. When FmHA concurs with the Lender's conclusion or at any time concludes independently the liquidation is necessary, it will notify the Lender and the matter will be handled as follows.

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan.

The Holder(s) will be paid according to the provisions in the Loan Note Guarantee and Assignment Guarantee Agreement.

The Lender may repurchase the loan from Holder(s) when the decision to liquidate is made. If the Lender declines to purchase the loan, FmHA will be notified in writing immediately. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). When FmHA holds any of the guaranteed portion of the loan, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days of the decision to liquidate, the Lender will prepare a written plan of liquidation and provide a copy of the plan to FmHA. If either the Lender or FmHA decides that an appraisal is necessary, the Lender will obtain an independent appraisal report on all collateral securing the loan for the purpose of aiding the Lender and FmHA in determining the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by the Lender and FmHA. The plan will address:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory notes and related security instruments.

2. Information concerning the Borrower's assets including real and personal property and other assets.

3. A proposed method of making the maximum collection possible on the indebtedness.

B. FmHA response to Lender's liquidation plan. FmHA will advise the Lender in writing whether it concurs with the plan within 30 days of receipt of such plan from the Lender. Should FmHA and the Lender not agree on the Lender's liquidation plan, the Lender and FmHA will negotiate to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however should FmHA opt to conduct the liquidation, the liquidation will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration document will be sent to FmHA or the Lender, as the case may be. If FmHA determines the liquidation is not proceeding in a manner typical for the area, it will notify the Lender that liquidation must be completed within a specified time, otherwise the Lender's approval status will be revoked.

D. Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting cost and additional procedures necessary for successful completion of the liquidation. When FmHA is the holder of a portion of the guaranteed loan, the Lender will transmit any payment received from the borrower to FmHA using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports upon request.

E. Determination of Loss and Payment. Final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any liable party.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations.

2. After the Lender has completed liquidation and upon receipt of the final accounting and Report of Loss, FmHA may audit and will determine the actual loss. FmHA will investigate any questions regarding the amounts in the Final Report of Loss and contact the Lender regarding any discrepancies for correction. The Lender will make its records and assistance available to FmHA. The final Report of Loss will be tentatively approved when FmHA finds the report proper in all respects.

3. Upon tentative approval of the final Report of Loss, FmHA will submit the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the balance owed by FmHA to the Lender.

4. If FmHA conducted the liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

5. In those instances where the Lender has made authorized protective advances, the amount advanced should be deducted from sales proceeds.

F. Maximum amount of interest loss payment. The amount payable to the Lender cannot exceed the limits set forth in the Loan Note Guarantee and Assignment Guarantee Agreement. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. Interest accrued may be covered to the extent of the guarantee when the Lender conducts the liquidation in an expeditious manner.

G. Application of FmHA loss payment. The total amount of the loss payment remitted by FmHA will be applied on the guaranteed portion of the loan. Application of loss payments from FmHA does not release the borrower from liability. Application of FmHA loss payments are intended only to compensate the Lender for the loss and such payments do not release the Borrower of liability. Such amounts are only to compensate the Lender for the loss. (See paragraph XIII below.) In all cases a final Form FmHA 449-30 must be prepared and submitted by the Lender and processed by FmHA to close out the files.

H. Income from collateral. Any net rental or other income received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. An estimate of these costs will be submitted as a part of the liquidation plan. Such costs will be deducted from the gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA concurrence) to be protective advances. If due to changed circumstances the liquidation plan needs to be revised, the Lender will obtain FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed including but not limited to employee salaries, staff lawyers, travel and overhead.

J. Payment. Final loss payments will be made within 60 days after the review of the accounting of the collateral.

X. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required for all protective advances exceeding $500 except for advances made for real estate taxes and other annual assessments that constitute a prior lien against the security. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XI. Additional Loans or Advances. The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or advances would not be guaranteed.

XII. Future Recovery. After a loan has been liquidated and a final loss has been paid by FmHA any future funds which may be recovered will be pro-rated in the same ratio as the original guarantee.

XIII. Transfer and Assumption cases. Refer to 7 CFR Part 1980, Subpart D. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor is released from liability, the Lender, if it holds the guaranteed portion of the loan may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt will be entered on Line 24 as the Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee will be entered on Lines 13 and 14 of Form FmHA 449-30.

XIV. Other requirements. This Agreement is subject to all the provisions of 7 CFR Part 1980, Subpart D and any future amendments

of the regulations not inconsistent with this Agreement.

XV. Execution of Agreements. This agreement is executed prior to the execution of any Loan Note Guarantee under 7 CFR Part 1980, Subpart D and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Loan Note Guarantee under 7 CFR Part 1980, Subpart D will be considered by FmHA on a case-by-case basis.

XVI. Notices.

All requests for Loan Note Guarantees and any notices or actions will be initiated through the following FmHA office:

_____

_____

_____.

XVII. Termination of Agreement. The Lender's authority to submit guarantee requests under this agreement will terminate two (2) years from the date set forth in paragraph XVIII unless otherwise revoked by FmHA. This Agreement will remain in force for any Loan Note Guarantee issued under it and remaining in force at the time of expiration or revocation in accordance with the terms of Loan Note Guarantee until those loan note guarantees are concluded.

XVIII. This agreement is dated_____

Lender: _____

IRS I.D. Tax No.

By _____

Title _____

UNITED STATES OF AMERICA

By _____

Title _____

ATTEST: _____

(Seal)

Exhibit E—Form FmHA 1980–17, Loan Note Guarantee and Assignment Guarantee Agreement

State _____

County _____

Rural Housing Loan, 7 CFR Part 1980, Subpart D

Date of Note _____

Borrower Name _____

FmHA Case No. _____

Lender _____

Lender IRS ID No. _____

Lender's Address _____

Principal Amt of Loan _____

This Loan Note Guarantee and Assignment Guarantee Agreement is issued under Approved Lender Agreement for Single Family Housing Loan Guarantees dated _____.

The guaranteed portion of the loan is $_____ which is _____ percent of loan principal. The principal amount of the loan is evidenced by the attached note described below.

Lender's Identifying Number	Face Amount	Percent of Face Amount	Total Amount	Guaranteed

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmer's Home Administration of the United States Department of Agriculture (called "FmHA"), pursuant to Title V of the Housing Act of 1949, as amended (42 USC 1471 et seq.) does agree that in accordance with and subject to the conditions and requirements in this instrument, it will pay to:

A. Any holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due on such portion except that the Loan Note Guarantee and Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender or FmHA, nor shall the Loan Note Guarantee and Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of the debt for repurchase.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization including but not limited to, advances for taxes, annual assessment(s) and any interest due on the advances.

2. The guaranteed principal advanced to or assumed by the Borrower under said note or assumption agreement and any interest due on the note or assumption agreement.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest after the date FmHA accepts responsibility for the liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan, accruing interest will be covered by this Loan Note Guarantee to the date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the loan to an assignee, the assignee becomes the Holder only when the Assignment provision of this Form is executed by all parties.

Definition of Lender

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of 7 CFR Part 1980 Subpart D. The lender is also the party requesting the guarantee.

Conditions of the Guarantee

1. Loan Servicing

Lender will be responsible for servicing the entire loan and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan.

2. Priorities

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

3. Full Faith and Credit

The Loan Note Guarantee and Assignment Guarantee Agreement constitutes an obligation supported by full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which the lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. If the note to which this instrument is attached or relates provides for the payment of interest on interest, then this Loan Note Guarantee and Assignment Guarantee Agreement is void. In addition, the Loan Note Guarantee and Assignment Guarantee Agreement will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the forgoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those approved by FmHA in its Form FmHA 1980–18, "Conditional Commitment for Single Family Housing Loan Guarantee." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of this Loan Note Guarantee and Assignment Guarantee Agreement by Lender. Nothing contained in this instrument will constitute any waiver of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. Payments

Lender will receive all payments of principal and interest and any loan subsidy

on the account of the entire loan and will promptly remit to Holder(s) its pro rata share of the payment determined according to its respective interest in the loan, less only the Lender's servicing fee.

6. Protective Advances

Protective Advances by the lender pursuant to the regulations will be guaranteed against a percentage of the loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender (Defaults)

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of the written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal and interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower within 30 days of its receipt of the payment. The Holder will concurrently send a copy of the demand to FmHA. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee and Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee and Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of the debt for repurchase. The Lender will accept an assignment without recourse from the Holder(s) upon purchase. The Lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. FmHA Purchase

If the Lender does not repurchase the loan as provided by paragraph 7 of this instrument, FmHA will purchase from the Holder the unpaid portion of principal and accrued interest to date of repurchase less the Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of the original of the Loan Note Guarantee and Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including the unpaid principal, accrued interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will be not later than 30 days from the demand.

FmHA will promptly notify the Lender of its receipt of the Holder(s) demand for payment. The Lender will promptly provide FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before the payment will be approved. FmHA will notify both parties who must resolve the conflict before the payment by FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and verify the demand. The State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance the Finance Office will notify the State Director and remit the check(s) to the Holder(s).

9. Lender's obligations

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest the owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against the Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligations to Lender under the Loan Note Guarantee.

10. Repurchase by Lender for Servicing

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) requesting the Holder to tender their guarantee portions(s).

a. The Lender will not repurchase from the Holder for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option, may purchase such guaranteed portions for servicing purposes.

11. Custody of the Unguaranteed Portion

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When the Guarantee Terminates

The Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate after 30 days after the date of the notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. Settlement

The amount due under this instrument will be determined and paid as provided in the CFR Part 1980, Subpart D in effect on the date of this instrument.

14. Notices

All notices and actions will be initiated through the FmHA _____ (State) for _____ with the mailing address at the date of this instrument:

_____

_____

UNITED STATES OF AMERICA
Farmers Home Administration
By: _____
Title: _____
(Date) _____

To be completed when guaranteed portion of loan is to be assigned to a holder(s):
(Holder) _____of _____ desires to purchase from Lender ____% of the guaranteed portion of the loan guaranteed under this instrument. A copy of the Borrower's note(s) is attached to this instrument as a part of it.

Now, therefore, the parties agree:

15. The principal amount of the loan now outstanding is $_____. Lender hereby assigns to Holder _____% of the guaranteed portion of the loan representing $_____ of such loan now outstanding in accordance with all of the terms and conditions set forth below. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the guaranteed fee in exchange for the issuance of the Loan Note Guarantee. The Holder acknowledges and accepts all of the terms of the guarantee agreement as set forth above as part of this assignment agreement including, but not limited to the provisions regarding Full Faith and Credit, Right and Liabilities, Loan Servicing, Repurchase by Lender (Defaults), and Purchase by FmHA, Repurchase by Lender for Servicing in addition to those listed below.

16. Loan Servicing

The Lender will receive all payments on account of principal of, or interest on, the entire loan and shall promptly remit to the Holder its pro rata share of the payment determined according to their respective interests in the loan, less only Lender's servicing fee.

17. Servicing Fee

Holder agrees that Lender will retain a servicing fee of ____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned under this instrument.

18. Purchase by Holder

The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will succeed to all rights of the Lender under the Loan Note Guarantee and Assignment Guarantee Agreement to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all obligations under the Loan Note Guarantee and Assignment Guarantee Agreement and the program regulations found in the Subpart D of 7 CFR Part 1980 now in effect and future FmHA program regulations not inconsistent with the provisions of the Loan Note Guarantee and Assignment Guarantee Agreement.

19. Rights and Liabilities

The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned under this instrument. An endorsement may be added to this form to effectuate the transfer.

20. Foreclosure

The parties owning the guaranteed portions and unguaranteed portions will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

21. Reassignment

The Holder, upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold under this instrument. Upon such notification, the assignee will succeed to all rights and obligations of the Holder under this instrument.

22. Notices

All notices and actions will be initiated through the FmHA _____ (State) for _____ with the mailing address at the date of this instrument:

_____

_____

Dated this ____ day of _____ 19____.

LENDER:
ADDRESS:
By: _____
Title: _____
Attest: _____

HOLDER:
ADDRESS:
By: _____
Title: _____
Attest: _____

UNITED STATES OF AMERICA
Farmers Home Administration
By: _____
Title: _____
(Date) _____

Exhibit F—Form FmHA 1980–18, Conditional Commitment for Single Family Housing Loan Guarantee

Case No. _____
State _____
TO: Lender _____
County _____
Lender's Address _____
Type of Loan _____
Borrower _____
Principal Amount of Loan _____

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form(s) FmHA 1980–16, "Loan Note Guarantee and Assignment Guarantee Agreement," subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is ____%.[1]

If a variable rate is used, it must be tied to a base rate which must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.360 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out on the Request for Loan Note Guarantee. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on these forms will be considered Additional Conditions and Requirements including Source and Use of funds: [2]

This conditional commitment will expire on _____[3] unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA
By: _____
FmHA _____
Date: _____
Title

ACCEPTANCE OF CONDITIONS

To: Farmers Home Administration (FmHA) [4]

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within ____ days.

_____
(Name of Lender)
By: _____
(Signature for Lender)

_____
(Date)

[1] Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan subsidy rate, if applicable.

[2] Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE."

[3] FmHA will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

[4] Return completed and signed copy of this form to FmHA issuing office.

Date: March 14, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–7220 Filed 3–28–89; 8:45 am]
BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89–033]

Restrictions on Importation of Horses From Czechoslovakia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations by adding Czechoslovakia to the list of countries in which contagious equine metritis (CEM) exists. Because Czechoslovakia is no longer free of CEM, we are restricting the importation of certain horses from that country to prevent the livestock of the United States from contracting the disease.

Stallions and mares over 731 days of age from Czechoslovakia will no longer be allowed entry into the United States under standard 3-day quarantine and testing procedures. Instead, these horses must be tested and treated in accordance with procedures established to qualify stallions and mares from CEM-affected countries for importation into the United States.

DATES: Interim rule effective March 24, 1989. Consideration will be given only to

comments postmarked or received on or before March 30, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89–033. Comments received may be inspected at USDA, 14th and Independence Avenue SW., Room 1141-South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including contagious equine metritis (CEM), into the United States. CEM, a venereal disease, affects horses' fertility and breeding.

Section 92.2(i)(1) lists the countries in which CEM exists and, with certain exceptions, prohibits importation of horses from those countries and horses that have been in any of those countries within the 12 months immediately preceding their export to the United States.

In response to information published by the Government of Czechoslovakia that CEM has been diagnosed in that country, we are adding it to the list of countries in which CEM exists.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists warranting publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent carriers of CEM from introducing it into the United States.

Because prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make the interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. A final rulemaking document, including any amendments we make to this interim rule as a result of any comment, will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

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

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

Stallions and mares from Czechoslovakia that are older than 731 days must undergo testing and treatment in Czechoslovakia and the United States that is more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the horses' importation into this country and therefore, increase the cost to importers of horses from Czechoslovakia. However, of the approximately 30,000 horses imported into the United States in 1988, only 1 came from Czechoslovakia. We estimate the number of horses affected by this interim rule to be small. We therefore expect this rule to have little or no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this interim rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they could import horses from any CEM-free country.

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. Section 92.2, paragraph (i)(1), is amended by adding "Czechoslovakia," immediately after "Belgium,".

Done in Washington, DC, this 24th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–7412 Filed 3–28–89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–CE–06–AD; Amdt. 39–6174]

Airworthiness Directives; GROB WERKE GmbH & Company KG (Burkhart Grob) Model G103 TWIN II and Model G103 A TWIN II ACRO Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Grob Werke GmbH & Co. G103 TWIN II and G103 A TWIN II ACRO gliders, which requires a visual inspection of the welded parts of the control system and reinforcement of these parts. This action is prompted by discovery of cracks in the welded area on these gliders. This condition, if not corrected, could ultimately result in loss of control of the glider.

EFFECTIVE DATES: April 27, 1989. Comments for inclusion in the Rules Docket must be received on or before May 30, 1989.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: The technical information and modification parts applicable to this AD may be obtained from Grob Systems, Incorporated, Aircraft Division, I–75 and Airport Drive, Bluffton, Ohio 45817, telephone (419) 358–9015. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Attention: Rules Docket No. 89–CE–06–AD, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Brussels Aircraft Certification Staff, AEU–100, FAA, c/o American Embassy, 15 Rue de la Loi B1040, Brussels, Belgium; Telephone 793.21.10 extension 2718; or Mr. James S. Kishi, ACE–106, Small Aircraft Certification Directorate, FAA, 601 East Twelfth Street, Room 1656, Kansas City, Missouri 64106; Telephone (816) 426–6933.

SUPPLEMENTARY INFORMATION: Grob Werke GmbH & Co. has determined that cracks may develop in the welded parts in the flight control System of the Models G103 TWIN II and G103 A TWIN II ACRO gliders. As a result, the manufacturer has issued Service Bulletin TM 315–37, dated July 22, 1988, which recommends a visual inspection of control system parts for weld cracks and reinforcement of certain control system parts. The Luftfahrt-Bundesamt (LBA), who has the responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected gliders. On gliders operated under Federal Republic of Germany registration, this action has the same effect as an AD on gliders certified for operations in the United States. The FAA relies upon certification of LBA combined with FAA review of pertinent documentation in finding compliance of the design of these gliders with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Service Bulletin TM 315–37, dated July 22, 1988, and the mandatory classification of this service bulletin by the LBA. Based on the foregoing, the FAA believes that the condition addressed by the service bulletin is an unsafe condition that may exist on other products of this type design certificated for operation in the United States.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other gliders of the same type design, an AD is being issued requiring visual inspection of control system parts for weld cracks and reinforcement of certain control system parts on Models G103 TWIN II and G103 A TWIN II ACRO gliders in accordance with the aforementioned service bulletin. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the Rules Docket at the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report summarizing each FAA public contact concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Grob Werke GMBH & Company KG (Burkhart Grob): Applies to Models G103 TWIN II and G103 A TWIN II ACRO (serial numbers 3501 through 3878, and 33879 through 34078) gliders.

Compliance: As indicated in the body of the AD.

To preclude failure of the flight control systems, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD, inspect the control systems for weld cracks in accordance with the instructions contained in Grob Service Bulletin (S/B) TM315–37, dated July 22, 1988.

(b) If weld cracks are found per the inspection specified in paragraph (a) of this AD, prior to further flight repair the cracks and modify the glider in accordance with the instructions in the above referenced S/B.

(c) If weld cracks are not found per the inspection specified in paragraph (a) of this AD, within the next 100 hours time-in-service after the effective date of this AD, modify the glider in accordance with the instructions in the above referenced S/B.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Staff, AEU-100, FAA, c/o American Embassy, 15 Rue de la Loi B1040, Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Grob Systems, Incorporated, Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45817; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on April 27, 1989.

Issued in Kansas City, Missouri, on March 20, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-7458 Filed 3-28-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket Nos. RM82-25-000, et al.]

Update of Commission Filing Fees

Issued March 24, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Update of Commission filing fees.

SUMMARY: In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update by using data under the Commission's Time Distribution Reporting System and Payroll Utilization Reporting System to calculate the new fees.

EFFECTIVE DATE: April 28, 1989.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Notice of Update of Filing Fees Under the Independent Offices Appropriations Act of 1952

In the matter of: Fees applicable to producer matters under the Natural Gas Act, Docket No. RM82-25-000; Fees applicable to natural gas pipeline rate matters, Docket No. RM83-2-000; Fees applicable to the Natural Gas Policy Act, Docket No. RM82-30-000; Fees applicable to General Activities, Docket No. RM82-35-000; Fees applicable to Natural Gas Pipelines, Docket No. RM82-31-000; Fees applicable to Electric Utilities, Cogenerators, and Small Power Producers, Docket No. RM82-38-000; Revisions to the Purchased Gas Adjustment Regulations, Docket No. RM86-14-000; Filing Fees Under the Independent Offices Appropriations Act of 1952, Docket No. RM87-26-000; Revision of Filing Fees for Natural Gas Rate and Tariff Filings, Docket No. RM88-28-000.

The Federal Energy Regulatory Commission (Commission), by its designee the Executive Director,[1] is issuing this final rule to update the filing fees the Commission assesses for specific services and benefits provided to identifiable beneficiaries. The Independent Offices Appropriations Act of 1952 (IOAA) authorizes the Commission to establish and collect these fees [2] and the Commission's regulations require an annual update of the IOAA fees based on data from the previous fiscal year.[3] The Commission is establishing updated fees on the basis of the Commission's cost, completion, and work time data for fiscal year 1988. The adjusted fees announced in this final rule will become effective 30 days after publication in the **Federal Register.**

The new fee schedule is as follows:

Fees Applicable to Producer Matters Under the Natural Gas Act

1. Blanket certificates for small producers (codified at 18 CFR 381.201) $480
2. Producer certificates of public convenience and necessity (18 CFR 381.202) $1,840
3. Changes in producer rate schedules (18 CFR 381.203) $560

Fees Applicable to Natural Gas Pipeline Rate Matters [4]

1. Pipeline tariff filings for general changes in rates and for changes other than in rates
   (a) For major natural gas companies (18 CFR 381.204(a)) $4,510
   (b) For natural gas companies other than major natural gas companies (18 CFR 381.204(b)) $1,800
2. Pipeline tariff filings that track certain costs
   (a) For major natural gas companies
   (1) Annual filing under § 154.305 (18 CFR 381.205(a)(1)) $5,060
   (2) Quarterly filing under § 154.308 (18 CFR 381.205(a)(2)) $1,330
   (3) Interim adjustment filing under § 154.309 (18 CFR 381.205(a)(3)) $610
   (4) Any other tariff filing that tracks costs (18 CFR 381.205(a)(4)) $1,330
   (b) For natural gas companies other than major natural gas companies
   (1) Annual filing under § 154.305 (18 CFR 381.205(b)(1)) $2,020
   (2) Quarterly filing under § 154.308 (18 CFR 381.205(b)(2)) $530
   (3) Interim adjustment filing under § 154.309 (18 CFR 381.205(b)(3)) $240
   (4) Any other tariff filing that tracks costs (18 CFR 381.205(b)(4)) $530

Fees Applicable to the Natural Gas Policy Act

1. Adjustments under section 502(c) of the Natural Gas Policy Act (18 CFR 381.401) $4,300
2. Review of jurisdictional agency determinations (18 CFR 381.402) $80
3. Petitions for rate approval pursuant to § 284.123(b)(2) (18 CFR 381.403) $1,680
4. Initial or extension reports for Title III transactions (18 CFR 381.404) $240

Fees Applicable to General Activities

1. Request for interpretation by the Office of the Chief Accountant (18 CFR 381.301) $310
2. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act) (18 CFR 381.302(a)) $9,260
3. Review of a Department of Energy remedial order:
   Amount in controversy
   $0-9,999 (18 CFR 381.303(b)) $100
   $10,000-29,999 (18 CFR 381.303(b)) $600
   $30,000 or more (18 CFR 381.303(a)) $9,590
4. Review of a Department of Energy denial of adjustment:
   Amount in controversy
   $0-9,999 (18 CFR 381.304(b)) $100
   $10,000-29,999 (18 CFR 381.304(b)) $600
   $30,000 or more (18 CFR 381.304(a)) $7,230
5. Written legal interpretations by the Office of the General Counsel (18 CFR 381.305(a)) $1,650

Fees Applicable to Natural Gas Pipelines

1. Pipeline certificate applications (18 CFR 381.207(b)) $26,280
2. Requests under the blanket certificate notice and protest procedures (18 CFR 381.208(a)) $1,470
3. Curtailment filings (18 CFR 381.209(b)) $5,330

Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers

1. Rate schedule filings under sections 205 and 206 of the Federal Power

[1] 18 CFR 375.313(a) (1988).

[2] 31 U.S.C. 9701 (1982).

[3] 18 CFR 381.104 (1988).

[4] There is no fee for a tariff filing that responds to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline.

Act (18 CFR 381.502(a)) ..... [5] $6,630
2. Certification of qualifying status as a small power production facility (18 CFR 381.505(a)) $5,360
3. Certification of qualifying status as a cogeneration facility (18 CFR 381.505(a)) $6,350
4. Extension of equipment testing periods (18 CFR 381.506) $1,010
5. Applications to assume obligation or liability as guarantor or for the negotiated placement of securities (18 CFR 381.507) $4,470
6. Authorization to issue equity or debt securities (18 CFR 381.508) $1,550
7. Corporate applications involving one or more jurisdictional utilities (18 CFR 381.509) $8,600
8. Applications to hold interlocking positions (18 CFR 381.510) $2,510

Fees Applicable to the Public Utility Regulatory Policies Act of 1978

1. 5 Megawatt exemption application (18 CFR 381.601) $15,920

List of Subjects in 18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 381 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

Kenneth F. Plumb,

Executive Director.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717W (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

§ 381.201 [Amended]

2. Section 381.201 is amended by removing $540 and inserting $480 in its place.

§ 381.202 [Amended]

3. Section 381.202 is amended by removing $1,920 and inserting $1,840 in its place.

§ 381.203 [Amended]

4. Section 381.203 is amended by removing $510 and inserting $560 in its place.

§ 381.204 [Amended]

5. In § 381.204, paragraph (a) is amended by removing $4,320 and inserting $4,510 in its place and paragraph (b) is amended by removing $1,720 and inserting $1,800 in its place.

§ 381.205 [Amended]

6. In § 381.205, paragraph (a)(1) is amended by removing $4,440 and inserting $5,060 in its place; paragraph (a)(2) is amended by removing $910 and inserting $1,330 in its place; paragraph (a)(3) is amended by removing $910 and inserting $610 in its place; and paragraph (a)(4) is amended by removing $910 and inserting $1,330 in its place.

7. In § 381.205, paragraph (b)(1) is amended by removing $1,770 and inserting $2,020 in its place; paragraph (b)(2) is amended by removing $360 and inserting $530 in its place; paragraph (b)(3) is amended by removing $360 and inserting $240 in its place; and paragraph (b)(4) is amended by removing $360 and inserting $530 in its place.

§ 381.207 [Amended]

8. In § 381.207, paragraph (b) is amended by removing $19,450 and inserting $26,280 in its place.

§ 381.208 [Amended]

9. In § 381.208, paragraph (a) is amended by removing $2,120 and inserting $1,470 in its place.

§ 381.209 [Amended]

10. In § 381.209, paragraph (b) is amended by removing $4,060 and inserting $5,330 in its place.

§ 381.301 [Amended]

11. Section 381.301 is amended by removing $200 and inserting $310 in its place.

§ 381.302 [Amended]

12. In § 381.302, paragraph (a) is amended by removing $11,670 and inserting $9,260 in its place.

§ 381.303 [Amended]

13. In § 381.303, paragraph (a) is amended by removing $10,260 and inserting $9,590 in its place.

§ 381.304 [Amended]

14. In § 381.304, paragraph (a) is amended by removing $3,660 and inserting $7,230 in its place.

§ 381.305 [Amended]

15. In § 381.305, paragraph (a) is amended by removing $2,460 and inserting $1,650 in its place.

§ 381.401 [Amended]

16. Section 381.401 is amended by removing $2,430 and inserting $4,300 in its place.

§ 381.402 [Amended]

17. Section 381.402 is amended by removing $75 and inserting $80 in its place.

§ 381.403 [Amended]

18. Section 381.403 is amended by removing $1,990 and inserting $1,680 in its place.

§ 381.404 [Amended]

19. Section 381.404 is amended by removing $410 and inserting $240 in its place.

§ 381.502 [Amended]

20. In § 381.502, paragraph (a) is amended by removing $5,780 and inserting $6,630 in its place.

§ 381.505 [Amended]

21. In § 381.505, paragraph (a) is amended by removing $6,560 and inserting $5,360 in its place and by removing $4,310 and inserting $6,350 in its place.

§ 381.506 [Amended]

22. Section 381.506 is amended by removing $1,110 and inserting $1,010 in its place.

§ 381.507 [Amended]

23. Section 381.507 is amended by removing $3,430 and inserting $4,470 in its place.

§ 381.508 [Amended]

24. Section 381.508 is amended by removing $2,010 and inserting $1,550 in its place.

§ 381.509 [Amended]

25. Section 381.509 is amended by removing $8,420 and inserting $8,800 in its place.

§ 381.510 [Amended]

26. Section 381.510 is amended by removing $1,100 and inserting $2,510 in its place.

§ 381.601 [Amended]

27. Section 381.601 is amended by removing $16,430 and inserting $15,920 in its place.

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BILLING CODE 6717–01–M

[5] No fee is assessed for rate schedule filings that have no effect on the rate a utility charges or that involve only rate decreases.

RAILROAD RETIREMENT BOARD

20 CFR Parts 225, 226, 227 and 232

Primary Insurance Amount Determinations

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board [Board] hereby amends its regulations by adding a new part which explains primary insurance amounts used in computing employee, spouse, divorced spouse and survivor annuities, as well as how primary insurance amounts are affected by delayed retirement credits, cost-of-living increases, recomputation and adjustment. The subjects covered in this part contain rules not documented in current regulations.

EFFECTIVE DATE: March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929 (FTS 386–4929).

SUPPLEMENTARY INFORMATION: The Board hereby adds a new Part 225, Primary Insurance Amount Determinations. This change in the Board's regulations was published in the **Federal Register** as a proposed rule on September 7, 1983, and public comments were requested for a 60-day period (48 FR 40390). Although the Board received no comments on the proposed rule, certain revisions are required to conform Part 225 to current law. However, the topics covered in this part are essentially the same as those published in the proposed rule. Also, in keeping with the Board's effort to simplify and clarify its regulations, this final rule differs from the proposed rule in that: the text has been changed to put it into plainer English, titles have been made more descriptive, additional sections have been added for purposes of clarity and each major subpart begins with a "General" section to give the reader an orientation to its scope and contents. These changes in form and structure should make the part easier to use and understand. The Board has determined that a further period for public comment is unnecessary and is publishing this part as a final rule. Current Part 225 of the Board's regulations entitled "Computation of Annuity" is hereby redesignated as Part 226 and remains unchanged.

Part 225 is divided into seven Subparts A through G:

Subpart A, General (§§ 225.1 through 225.4), explains that the different primary insurance amount (PIA) computations used in the calculation of any retirement or survivor annuity are all based on certain formulas which are prescribed under section 215 of the Social Security Act. This subpart clearly and simply defines all of the terms relating to primary insurance amounts as they are used in this part. The proposed regulations did not define some of the terms. This subpart discusses PIA computation formulas and relates them to the PIA's which the Board uses. The limitation in the amount of earnings used to compute a PIA is also discussed in Subpart A.

Subpart B, PIA's Used in Computing Employee, Spouse and Divorced Spouse Annuities (§§ 225.10 through 225.15), describes the PIA's used by the Board in computing the annuity for an employee, spouse or divorced spouse who is entitled under the Railroad Retirement Act.

The 1983 Amendments to the Railroad Retirement Act, commonly referred to as the Railroad Retirement Solvency Act, changed the deeming provisions for employees who qualify for an age and service annuity based on 30 years of railroad service. The deeming provision affected the calculation of the Tier I PIA that is used in computing the tier I component of an annuity. Proposed Part 225 did not detail those changes in the Railroad Retirement Act affecting annuities based on 30 years of railroad service because the proposed part was written before passage of the Amendments.

Before the 1983 Amendments to the Railroad Retirement Act, an employee who was less than age 65 with 30 years of railroad service was deemed to be age 65 on his or her annuity beginning date for purposes of computing a Tier I PIA. The Railroad Retirement Act as amended affects the Tier I PIA of employees who acquire 30 years of railroad service or attain age 60 after June 30, 1984, and retire before age 62. For months before the first full month in which the employee is age 62, the average indexed monthly earnings on which the Tier I PIA is based is determined as if the employee's eligibility year were the year the annuity begins. Whereas, the benefit computation years used are based on the date of the employee's actual attainment of age 62. In addition, no cost-of-living increases in the Tier I PIA are payable before an employee attains age 62. The Tier I PIA is calculated in accordance with Social Security Act provisions when an employee with 30 years of railroad service retires in or after the month age 62 is attained.

Subpart C, PIA's Used in Computing Survivor Annuities and the Amount of the Residual Lump-Sum Payable (§§ 225.20 through 225.26), describes the PIA's used in computing survivor annuities and the amount of the residual lump-sum payable when retirement annuity payments were made.

Subpart D, Delayed Retirement Credits (§§ 225.30 through 225.36), discusses when an employee of retirement age can earn credit for months in which either the employee actually delayed retirement or all (or certain portions) of the employee's annuity was not paid due to earnings in excess of the exempt amount. Months for which delayed retirement credits (DRC's) are due, how the amount of credit is figured and the PIA's to which DRC's are added are discussed in this subpart. This subpart also discusses when a PIA used in computing a retirement annuity can be increased for DRC's and the effect of DRC's on survivor annuities.

The 1983 Amendments to the Social Security Act increased the percentage amounts used in figuring the amount of the credit to be applied to PIA's. Proposed Part 225 did not detail those changes in percentage amount.

The Social Security Act states that the amount of the delayed retirement credit is a percentage increase which is based on the year when an individual becomes eligible for old age benefits. The age of eligibility is 62. However, the part discusses the credit in terms of a percentage increase based on when the employee attains age 65 because, under the Social Security Act, that is the current age at which credit can be earned.

Before the 1983 Social Security Act Amendments, the delayed retirement credit percentage amount was one-fourth of one percent; and credit could be earned for any of the months beginning with the month of attainment of age 65 and ending with the month before attainment of age 72. This rate was applicable to employees who attained age 65 at any time after 1981. The 1983 Amendments provide that for individuals who attain age 65 in 1990 or later, the one-fourth of one percent rate will be increased by one-twenty-fourth of one percent in each even year until the rate reaches two-thirds of one percent for individuals attaining age 65 in 2008 or later. The Amendments also lowered the age at which credits can no longer be earned from 72 to 70. This lower age applies effective January 1984.

Subpart E, Cost-of-Living Increases (§§ 225.40 through 225.44), explains that a cost-of-living increase is an automatic increase in a PIA provided by the Social Security Act and that the Social Security Administration sets the percentage amount of any PIA cost-of-living increase paid by the Board.

This part details the changes in the cost-of-living increase caused by the 1983 Social Security Act Amendments. Prior to the 1983 Social Security Administration (Social Security) always based cost-of-living increases in rises in

the consumer price index; and the cost-of-living increase was payable for June (paid in the July payment). In order to deal with expected deficits in the social security trust funds, the Amendments changed the method and time for computing cost-of-living increases. When the social security trust fund ratio is less than a specified amount, Social Security determines whether there will be a cost-of-living increase and the amount of the increase by using the smaller of the increase in either the consumer price index or the average wage index. Rather than using first quarter index figures as had previously been done, the Amendments changed the comparison so that it is made from the third quarter of one year to the third quarter of the next year. Also, the month for which a cost-of-living increase is effective was changed from June to December (paid in the January payment). Therefore, Subpart E states that, depending on the condition of the social security trust funds, the cost-of-living increase can be based on rises in either the consumer price index or the average wage index. Likewise, the subpart states that a cost-of-living increase is payable in December (paid in the January payment).

Subpart F, Recomputing PIA's (§§ 225.50 through 225.58), explains that after a person begins receiving an annuity, certain PIA's can be recomputed due to additional information and legislative changes. The 1983 Amendments to the Social Security Act estalished a reduced PIA computation for employees who are eligible for certin periodic pension payments. Employees who become eligible for periodic pension payments after 1985 based, in part or in whole, on their work after 1956 in service not covered by either the Social Security Act or the Railroad Retirement Act are affected. The reduction only applies when the employee attains age 62 after 1985 or become eligible for a disability benefit after 1985 and he or she has less than 30 years of combined railroad and social security coverage. The amendments affect the coputation of the Tier I PIA used in computing an employee, spouse or divorced spouse annuity as well as the Overall Minimum PIA.

Subpart G, Adjusting PIA's (§ 225.60), describes the adjustment in the Tier I PIA when an employee, who retires at age 60 or 61 based on 30 years of railroad service, attains age 62.

The Railroad Retirement Act provides an age and service annuity for employees with 30 years of railroad service who are at least age 60. As noted earlier, the 1983 Amendments to the Railroad Retirement Act made changes that affect the calculation of the Tier I PIA for these employees.

Before the 1983 Amendments to the Railroad Retirement Act, an employee with 30 years of railroad service was deemed to be age 65 when his or her annuity began. The deeming provision as it affected the Tier I PIA calculation remained in effect so long as the employee was entitled to an annuity based on age.

The Railroad Retirement Act as amended provides for an adjustment of the Tier I PIA when an employee, who retires at age 60 or 61 based on 30 years of railroad service, attains age 62. The change affects employees who acquire 30 years of railroad service or attain age 60 after June 30, 1984. The adjustment serves to compute a Tier I PIA based on Social Security Act provisions, thereby eliminating the Tier I PIA deeming provision of the Railroad Retirement Act. The adjusted Tier I PIA is paid beginning with the first full month the annuitant is age 62.

The Bureau of Law within the Board is currently involved in a project to revise all regulations for which it has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain English, in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Board believes that any minor inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily useable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this part imposes no reporting or record keeping requirements requiring OMB clearance.

List of Subjects in 20 CFR Parts 225, 226, 227 and 232

Employee benefit plans, Railroad employees, Railroad Retirement, Railroads.

For the reasons set out in the preamble, Chapter II of Title 20 of the *Code of Federal Regulations* is amended as follows:

PART 225—COMPUTATION OF ANNUITY

1. Part 225 is redesignated as Part 226 and all internal references are changed accordingly.

2. The authority citation for newly redesignated Part 226 is revised to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

PART 227—COMPUTING SUPPLEMENTAL ANNUITIES

3. The authority citation for Part 227 is revised to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

§ 227.3 [Amended]

4. Section 227.3 is amended by removing the reference to "Part 225" and inserting "Part 226."

PART 232—SPOUSES' ANNUITIES

5. The authority citation for Part 232 is revised to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

§ 232.302 [Amended]

6. Section 232.302(a)(2) is amended by removing the reference to "§ 225.6" and inserting "§ 226.6."

7. A new 20 CFR Part 225 is added as follows:

PART 225—PRIMARY INSURANCE AMOUNT DETERMINATIONS

Subpart A—General

Sec.

Subpart B—PIA's Used in Computing Employee, Spouse and Divorced Spouse Annuities

Subpart C—PIA's Used in Computing Survivor Annuities and the Amount of the Residual Lump-Sum Payable

Authority: 45 U.S.C. 231f(b)(5).

Subpart A—General

§ 225.1 Introduction.

This part discusses Primary Insurance Amount, which is referred to as PIA throughout this part, and which is an important element in the calculation of any retirement or survivor annuity. There are a number of PIA computations based on different periods, amounts, and types of earnings. However, the formulas for computing any PIA are prescribed in section 215 of the Social Security Act and are described in detail in the regulations of the Social Security Administration (20 CFR 404, Subpart C). This part discusses PIA computation formulas and relates them to the PIA's which the Board uses. Descriptions of the majority of PIA's used in computing retirement or survivor annuities under the Railroad Retirement Act are contained in this part. Explanations are included of when delayed retirement credits and cost-of-living increases can be added to the PIA's used by the Board. This part also explains when and how a PIA is recomputed or adjusted. Since these regualtions are intended to address annuities currently being awarded, certain PIA's, not used in the computation of annuities awarded after August 13, 1981, are not included in these regulations. Parts 226, 228 and 229 of this chapter explain how PIA's are used in actual annuity computations.

§ 225.2 Definitions.

As used in this part:

"Average Indexed Monthly Earnings" means the result of dividing the total of the indexed earnings through the indexing year and the nonindexed earnings after the indexing year in the benefit computation years by the number of months in the benefit computation years. The indexing year for the Average Indexed Monthly Earnings PIA is the second year before the employee's eligibility year. Indexing of an employee's yearly earnings serves to put the earnings in proportion to the earnings level of all workers for the corresponding years, and to express the earnings in terms of a more recent dollar value. Indexed earnings are determined under section 215(b)(1) of the Social Security Act. The Average Indexed Monthly Earnings formula PIA is based on the Average Indexed Monthly Earnings amount.

"Average Monthly Earnings" means the average determined by dividing the acutal earnings used in computing the PIA by the total months in the benefit computation years. The Average Monthly Earnings is determined under section 215(b)(4) of the Social Security Act. The Average Monthly Earnings formula PIA is based on the Average Monthly Earnings amount.

"Base Years" means the years after 1950 (or 1936, if applicable) and up to the year in which the employee dies or is entitled to an annuity based on retirement or disability. When the employee's death occurs before he or she reaches retirement age as defined in section 216(I) of the Social Security Act, the Base Years include the year of the employee's death. Base Years are defined in sections 215(b)(2)(B)(ii) and 215(d) of the Social Security Act.

"Benefit Computation Years" means the years with the highest earnings used in computing the Average Indexed Monthly Earnings or Average Monthly Earnings. The number of Benefit Computation Years is determined in accordance with section 215(b)(2)(B)(i) of the Social Security Act and is based on the employee's age or when the employee becomes disabled or dies.

"Compensation" means "railroad compensation" which is the amount of creditable railroad earnings under the Railroad Retirement Act, as explained in Part 211 of this chapter.

"Earnings" means "compensation" creditable under the Railroad Retirement Act (other than compensation attributable to years of service prior to 1937) or "wages" creditable under the Social Security Act or both.

"Eligible" means that a person meets the necessary requirements and could qualify for payment if a valid application were filed.

"Eligibility Year" means the earliest of: the employee's year of attainment of age 62; The year of disability onset; or the year of death. The Eligibility Year determines the formula used to compute a Primary Insurance Amount. Eligibility Year is defined in section 215(a) of the Social Security Act.

"Employee" means any person who is working or has worked for a railroad employer who is eligible for a retirement annuity or on whose account a survivor is eligible for a survivor annuity, as explained in Part 216 of this chapter. For a detailed discussion of Employees under the Railroad Retirement Act, see Part 203 of this chapter.

"Entitled" means that a person meets the necessary requirements, files a valid application and establishes his or her right to payment.

"Indexed Earnings" means the employee's yearly earnings for the years after 1950 that have been adjusted to put the earnings in proportion to the earnings level of all workers for each of those years and to express the earnings in terms of a more recent dollar amount.

"Primary Insurance Amount" (PIA) means the result obtained by applying one of three formulas in the Social Security Act to the employee's earnings as prescribed under that Act. A PIA can be based on the Average Indexed Monthly Earnings formula, the Average Monthly Earnings formula or, in the case of the Special Minimum PIA, on a special formula based on years of coverage. Averaging earnings and PIA formulas are prescribed in section 215 of the Social Security Act.

"Social Security Act" means the Social Security Act as amended from time to time, unless the Act as in effect on a particular date is specified.

"Wages" means creditable wages or self-employment under sections 209 or 211, respectively, of the Social Security Act.

"Year of Service" means 12 months of railroad service credited in accordance with Part 210 of this chapter.

"Years of Coverage" means years after 1936 as defined in section 215(a)(1)(C)(ii) of the Social Security Act

in which the employee had earnings over certain specified amounts. Years of Coverage is primarily a factor in determining the Special Minimum formula PIA amount.

§ 225.3 PIA computation formulas.

(a) *General.* PIA's are generally computed under one of two normal formulas determined by the employee's eligibility year. In addition, there is a special PIA formula, based on an employee's years of coverage, that is used when it produces a PIA that is higher than the PIA computed under the appropriate PIA formula. The two most common PIA formulas are the Average Indexed Monthly Earnings PIA formula and the Average Monthly Earnings PIA formula. The special PIA formula is called the Special Minimum PIA formula.

(b) *Average Indexed Monthly Earnings PIA formula.* When the employee's eligibility year is after 1978, the Tier I PIA, Overall Minimum PIA, Survivor Tier I PIA, Employee's Retirement Insurance Benefit PIA and Residual Lump-Sum PIA are computed under the Average Indexed Monthly Earnings PIA formula.

(c) *Average Monthly Earnings PIA formula.* The Average Monthly Earnings PIA formula is used to compute a PIA for one of two reasons: either the employee's eligibility year is before 1979 or the type of PIA requires that it always be computed under the Average Monthly Earnings PIA formula.

(1) *Use of Average Monthly Earnings PIA formula based on the employee's eligibility year.* The Average Monthly Earnings PIA formula is used in computing the Tier I PIA, the Overall Minimum PIA, the Employee Fictional Retirement Insurance Benefit PIA and the Residual Lump-Sum PIA when the employee's eligibility year is before 1979.

(2) *Types of PIA's always computed using the Average Monthly Earnings PIA formula.* The following PIA's used by the Board are determined under the Social Security Act as in effect on December 31, 1974, and are always computed using the Average Monthly Earnings PIA formula.

(i) Combined Earnings Dual Benefit PIA described in § 225.12.

(ii) Social Security Earnings Dual Benefit PIA described in § 225.13.

(iii) Railroad Earnings Dual Benefit PIA described in § 225.14.

(iv) Combined Earnings PIA described in § 225.23.

(v) Social Security Earnings PIA described in § 225.24.

(vi) Railroad Earnings PIA described in § 225.25.

(d) *Special Minimum PIA formula.* The Special Minimum PIA formula is based on the employee's years of coverage. The Special Minimum PIA formula usually applies when the employee had consistently low earnings during his or her working lifetime. The Special Minimum PIA formula is used when it is higher than the PIA calculated under the applicable Average Indexed Monthly Earnings formula or the Average Monthly Earnings formula.

§ 225.4 Limitation on amount of earnings used to compute a PIA.

Certain PIA's used by the Board are based on a combination of compensation and wages, while other PIA's used by the Board are based solely on either compensation or wages. For purposes of crediting earnings when computing any PIA, compensation is always treated as wages. Regardless of whether a PIA is based on a combination of compensation and wages or exclusively on either compensation or wages, the total earnings for each year used in computing a PIA cannot be higher than the maximum social security earnings creditable in that year under sections 209(a) and 211(b) of the Social Security Act. The various PIA's used by the Board are described in Subparts B and C of this part.

Subpart B—PIA's Used in Computing Employee, Spouse and Divorced Spouse Annuities

§ 225.10 General.

This subpart contains information about the PIA's that can be used in computing most employee, spouse and divorced spouse annuities. The Tier I PIA is used in computing the tier I component of an employee, spouse or divorced spouse annuity. The Combined Earnings Dual Benefit PIA, Social Security Earnings Dual Benefit PIA and Railroad Earnings Dual Benefit PIA are used in computing an employee's vested dual benefit component and a corresponding tier II component offset when entitlement to a vested dual benefit exists. Retirement annuity computations are discussed in Part 226 of this chapter. The Overall Minimum PIA is used in computing the overall minimum guaranty formula rate as discussed in Part 229 of this chapter.

§ 225.11 Tier I PIA.

(a) *General.* The Tier I PIA is used in computing an employee, spouse or divorced spouse tier I amount. Except for the cases described in paragraphs (b) through (d) of this section, a Tier I PIA is determined under sections 215 and 223 of the Social Security Act. Railroad and Social Security earnings are included in the calculation of a Tier I PIA.

(b) *Employee attains age 60 and/or acquires 30 years of service after June 30, 1984.* When an employee is entitled to an age and service annuity before the month of attaining age 62, as explained in Part 216 of this chapter, the following Railroad Retirement Act rules apply in addition to those in § 225.11(a) in computing the Tier I PIA.

(1) Four months before the first full month the employee is age 62, the Average Indexed Monthly Earnings is determined as if the employee's eligibility year were the year the annuity began.

(2) The benefit computation years used in computing the Tier I PIA are based on the date of the employee's actual attainment of age 62.

(3) The Tier I PIA is adjusted when the employee reaches age 62 to use the year in which the employee attains age 62 as the eligibility year.

(4) Cost-of-living increases and recomputations apply after the employee attains age 62.

(c) *Employee attains age 60 and acquires 30 years of service before July 1, 1984.* For purposes of determining the benefit computation years to be used in computing the Tier I PIA for an employee who is age 60 through 64, and who both has 30 years of service and attains age 60 prior to July 1, 1984, the employee is considered to be age 65 when the age and service annuity begins. For purposes of computing the Average Indexed Monthly Earnings, the eligibility year is the year the annuity begins or age 62, if earlier. Cost-of-living increases are paid from the year the annuity begins. Recomputations are paid after the employee actually attain age 62.

(d) *Disability annuity.* When an employee is entitled to a disability annuity, as explained in Subpart B of Part 216 of this chapter, the following Railroad Retirement Act rule applies in addition to those in § 225.11(a) in computing the Tier I PIA. The Tier I PIA is computed as if the employee were 62 years old on the date, as determined by the Board, of onset of disability, if the employee is under age 62 on that date.

§ 225.12 Combined Earnings Dual Benefit PIA.

(a) *General.* The Combined Earnings Dual Benefit PIA is used in computing the employee vested dual benefit when the employee meets certain eligibility requirements as described in Part 216 of this chapter. The Combined Earnings Dual Benefit PIA is also used in computing the employee's tier II annuity

component when the employee becomes entitled to a vested dual benefit. This PIA is determined under section 215 of the Social Security Act as in effect on December 31, 1974. Railroad and social security earnings after 1950 (or after 1936, if applicable) and through December 31, 1974, or the last year of railroad service before 1974 are included in the calculation of this PIA.

(b) *Employee insured on own wage record on December 31, 1974.* Railroad and social security earnings after 1950 (or after 1936, if a higher PIA would result) and through 1974 are used in computing the Combined Earnings Dual Benefit PIA if the employee—

(1) Had at least 25 years of railroad service before January 1, 1975; or

(2) Had at least 10 years of railroad service as of December 31, 1974, and worked in the railroad industry anytime during calendar year 1974; or

(3) Had at least 10 years of railroad service as of December 31, 1974, and had a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

(c) *Employee insured on own wage record in last year of railroad service.* Railroad and social security earnings after 1950 (or after 1936, if a higher PIA would result) and through December 31 of the year before 1974 in which the employee last worked in railroad service are used in computing the Combined Earnings Dual Benefit PIA if the employee—

(1) Had at least 10 but less than 25 years of railroad service through December 31, 1974; and

(2) Did not work in the railroad industry during 1974; and

(3) Did not have a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

§ 225.13 Social Security Earnings Dual Benefit PIA.

(a) *General.* The Social Security Earnings Dual Benefit PIA is used in computing the employee vested dual benefit when the employee meets certain eligibility requirements as described in Part 216 of this chapter. The Social Security Dual Benefit PIA is also used in computing the employee's tier II annuity component when the employee becomes entitled to a vested dual benefit. This PIA is determined under section 215 of the Social Security Act as in effect on December 31, 1974. Social security earnings after 1950 (or after 1936, if applicable) and through December 31, 1974, or the last year of railroad service before 1974 are included in the calculation of this PIA.

(b) *Employee insured on own wage record on December 31, 1974.* Social security earnings after 1950 (or after 1936, if a higher PIA would result) and through 1974 are used in computing the Social Security Earnings Dual Benefit PIA if the employee—

(1) Had at least 25 years of railroad service before January 1, 1975; or

(2) Had at least 10 years of railroad service as of December 31, 1974, and worked in the railroad industry anytime during calendar year 1974; or

(3) Had at least 10 years of railroad service as of December 31, 1974, and has a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

(c) *Employee insured on own wage record in last year of railroad service.* Social security earnings after 1950 (or after 1936, if a higher PIA would result) and through December 31 of the year before 1974 in which the employee last worked in the railroad industry are used in computing the Social Security Earnings Dual Benefit PIA if the employee—

(1) Had at least 10 but less than 25 years of railroad service through December 31, 1974; and

(2) Did not work in the railroad industry during 1974; and

(3) Did not have a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

§ 225.14 Railroad Earnings Dual Benefit PIA.

(a) *General.* The Railroad Earnings Dual Benefit PIA is used in computing the employee vested dual benefit when the employee meets certain eligibility requirements as described in Part 216 of this chapter. The Railroad Earnings Dual Benefit PIA is also used in computing the employee's tier II annuity component when the employee becomes entitled to a vested dual benefit. This PIA is determined under section 215 of the Social Security Act as in effect on December 31, 1974. Railroad earnings after 1950 (or after 1936, if applicable) and through December 31, 1974, or the last year of railroad service before 1974 are included in the calculation of this PIA.

(b) *Employee insured on own wage record on December 31, 1974.* Railroad earnings after 1950 (or after 1936, if a higher PIA would result) and through 1974 are used in computing the Railroad Earnings Dual Benefit PIA if the employee—

(1) Had at least 25 years of railroad service before January 1, 1975; or

(2) Had at least 10 years of railroad service as of December 31, 1974, and worked in the railroad industry anytime during calendar year 1974; or

(3) Had at least 10 years of railroad service as of December 31, 1974, and had a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

(c) *Employee insured on own wage record in last year of railroad service.* Railroad earnings after 1950 (or after 1936, if a higher PIA would result) and through December 31 of the year before 1974 in which the employee last worked in railroad service are used in computing the Railroad Earnings Dual Benefit PIA if the employee—

(1) Had at least 10 but less than 25 years of railroad service through December 31, 1974; and

(2) Did not work in the railroad industry during 1974; and

(3) Did not have a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

§ 225.15 Overall Minimum PIA.

The Overall Minimum PIA is considered when the employee would be eligible for an old age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act based on combined railroad and social security earnings. The Overall Minimum PIA is used in computing the social security overall minimum guaranty amount. The overall minimum guaranty rate annuity formula is discussed in Part 229 of this chapter. The Overall Minimum PIA is determined under the rules in sections 215 and 223 of the Social Security Act. Railroad and social security earnings are included in the calculation of the Overall Minimum PIA. The Overall Minimum PIA is used to determine the amount which is treated as a social security benefit for the purpose of taxation pursuant to section 86(d) of the Internal Revenue Code of 1986.

Subpart C—PIA's Used in Computing Survivor Annuities and the Amount of the Residual Lump-Sum Payable

§ 225.20 General.

The Survivor Tier I PIA and the Employee RIB PIA are used in computing the tier I component of a survivor annuity. The Combined Earnings PIA, Social Security Earnings

PIA and Railroad Earnings PIA may be used in computing a vested dual benefit offset in the survivor tier II component when the survivor tier II is based on a percentage of the employee annuity tier II. In addition, these three PIA's are identical to those dual benefit PIA's used in computing an employee retirement annuity, as described in Subpart B of this part, when the employee died after being entitled to an annuity. Survivor annuity computations are discussed in Part 228 of this chapter. The Residual Lump-Sum PIA (RLS PIA) is used in computing the amount of the residual lump-sum payable when retirement annuity payments were made, as explained in Part 234 of this chapter.

§ 225.21 Survivor Tier I PIA.

The Survivor Tier I PIA is used in computing the tier I component of a survivor annuity. This PIA is determined in accordance with section 215 of the Social Security Act using the deceased employee's combined railroad and social security earnings after 1950 (or after 1936 if a higher PIA would result) through the date of the employee's death.

§ 225.22 Employee RIB PIA used in survivor annuities.

The Employee Retirement Insurance Benefit PIA (Employee RIB PIA) is used to compute the employee RIB amount when the employee had received a retirement annuity which was reduced for early retirement. As explained in Part 228 of this chapter, the employee RIB amount may be used in the survivor tier I component. This PIA is computed in accordance with section 215 of the Social Security Act using the deceased employee's combined railroad and social security earnings. The Employee RIB PIA is the same as the Survivor Tier I PIA when the employee had no earnings in the year of death. Earnings in the year of death are used in the recomputed PIA beginning January 1 of the year after the employee's death. (See Subpart F of this part for a discussion of PIA recomputations.)

§ 225.23 Combined Earnings PIA used in survivor annuities.

The Combined Earnings PIA used in survivor annuities may be used in computing the tier II component when the survivor tier II is based on a percentage of the employee annuity tier II and the employee had been or would be, if he or she were still alive, entitled to a vested dual benefit. If the employee received a retirement annuity before death, this PIA is identical to the retirement Combined Earnings Dual Benefit PIA described in Subpart B of this part. If a retirement annuity was not paid before the employee's death, the PIA is determined as if the employee were 65 years old in the month of his or her death. The Combined Earnings PIA used in survivor annuities is determined in accordance with section 215 of the Social Security Act as in effect on December 31, 1974. It is computed using the deceased employee's combined railroad and social security earnings after 1950 (or after 1936 if a higher PIA would result) through December 31, 1974.

§ 225.24 SS Earnings PIA used in survivor annuities.

The Social Security Earnings PIA (SS Earnings PIA) used in survivor annuities may be used in computing the tier II component when the survivor tier II is based on a percentage of the employee annuity tier II and the employee had been or would be, if he or she were still alive, entitled to a vested dual benefit. If the employee received a retirement annuity before death, this PIA is identical to the retirement SS Earnings Dual Benefit PIA described in Subpart B of this part. If a retirement annuity was not paid before the employee's death, the PIA is determined as if the employee were 65 years old in the month of his or her death. The SS Earnings PIA used in survivor annuities is determined in accordance with section 215 of the Social Security Act as in effect on December 31, 1974. It is computed using the deceased employee's social security earnings after 1950 (or after 1936, if a higher PIA would result) through December 31, 1974.

§ 225.25 RR Earnings PIA used in survivor annuities.

The Railroad Earnings PIA (RR Earnings PIA) used in survivor annuities may be used in computing the tier II component when the survivor tier II is based on a percentage of the employee annuity tier II and the employee had been or would be, if he or she were still alive, entitled to a vested dual benefit. If the employee received a retirement annuity before death, this PIA is identical to the retirement RR Earnings Dual Benefit PIA described in Subpart B of this part. If a retirement annuity was not paid before the employee's death, the PIA is determined as if the employee were 65 years old in the month of his or her death. The RR Earnings PIA used in survivor annuities is determined in accordance with section 215 of the Social Security Act as in effect on December 31, 1974. It is computed using the deceased employee's railroad earnings after 1950 (or after 1936, if a higher PIA would result) through December 31, 1974.

§ 225.26 Residual Lump-Sum PIA.

The Residual Lump-Sum PIA (RLS PIA) is used to compute the regular retirement annuity amounts to be deducted from the gross residual lump-sum amount in determining the amount of the residual lump-sum payable, as explained in Part 234 of this chapter. The RLS PIA is determined in accordance with section 215 of the Social Security Act using the employee's railroad compensation after 1950 (or after 1936, if a higher PIA would result) as if it were social security earnings. The RLS PIA is computed just like the retirement Tier I PIA described in Subpart B of this part, except that social security earnings are not used to compute the RLS PIA.

Subpart D—Delayed Retirement Credits

§ 225.30 General.

(a) A delayed retirement credit (DRC) is a percentage increase in a PIA. An employee who would have an insured status in accordance with section 214(a) of the Social Security Act based on combined railroad and social security earnings can earn DRC's. A DRC can be earned by the employee for each month, in or after the month of attaining age 65 and before the month of attaining age 70 (72 before 1984), in which the employee does not receive either—

(1) An annuity because the employee did not apply for an annuity; or

(2) The tier I and vested dual benefit work deduction annuity components or the social security overall minimum annuity rate because they are not paid since the employee works and has earnings in excess of the exempt amount. (The tier I and vested dual benefit work deduction annuity components, the social security overall minimum annuity rate and the exempt amount are described in Parts 226, 229 and 230 of this chapter, respectively.)

(b) Any credit earned by the employee also extends to the employee's widow(er), remarried widow(er) or surviving divorced spouse when he or she receives a survivor annuity that is based on age or disability.

(c) Credit earned by the employee does not extend to the employee's spouse or divorced spouse.

§ 225.31 PIA's to which DRC's are added.

(a) DRC's can be added to the following PIA's when used in computing the following benefits:

(1) Tier I PIA used in computing a retirement employee annuity.

(2) Overall Minimum PIA used in computing a retirement employee annuity.

(3) Survivor Tier I PIA used in computing a widow(er), remarried widow(er) or surviving divorced spouse annuity based on age or disability.

(4) Employee RIB PIA used in computing a widow(er), remarried widow(er) or surviving divorced spouse annuity based on age or disability.

(5) RLS PIA used in computing the amount of the residual lump-sum payable (as explained in Part 234 of this chapter).

§ 225.32 DRC's and the Special Minimum PIA.

Delayed retirement credits cannot be added to the Special Minimum PIA. Delayed retirement credits can only be added to the regular PIA's used in computing the benefits outlined in § 225.31.

§ 225.33 Months for which DRC's are due.

(a) A DRC is due for each month after 1970 in which the employee is—

(1) Age 65 years old or older and under age 70 (72 before 1984); and

(2) Fully insured under section 214(a) of the Social Security Act based on combined railroad and social security earnings; and either—

(i) Is not entitled to an annuity because he or she did not apply for an annuity; or

(ii) Is entitled to an annuity but has the full amount of the tier I and vested dual benefit work deduction component (described in Part 226 of this chapter) or the social security overall minimum rate (described in Part 229 of this chapter) withheld because of earnings in excess of the exempt amount (as explained in Part 230 of this chapter).

(b) The months for which credit is due need not be consecutive.

§ 225.34 How the amount of the DRC is figured.

(a) The amount of the DRC depends on—

(1) The year the employee reaches age 65; and

(2) The number of months for which the credit is due, as explained in § 225.33.

(b) The percent given in paragraphs (b) (i), (ii), or (iii) of this section is multiplied by the PIA; that product is then multiplied by the number of months for which credit is due and rounded to the next lowest multiple of $0.10, if the answer is not already a multiple of $0.10. The result is the DRC which is added to the PIA.

(i) *Employee attained age 65 before 1982.* The DRC equals one-twelfth of one percent of the PIA times the number of months after 1970 in which the employee is age 65 or older and for which credit is due.

(ii) *Employee attains age 65 after 1981 and before 1990.* The DRC equals one-fourth of one percent of the PIA times the number of months in which the employee is age 65 or older and for which credit is due.

(iii) *Employee attains age 65 in 1990 or later.* The rate of the DRC (one-fourth of one percent) is increased by one-twenty-fourth of one percent in each even year through 2008. Therefore, depending on when the employee attains age 65, the DRC percent will be as follows—

Year employee attains age 65	Delayed retirement credit percent
1990	7/24 of 1 percent.
1991	Do.
1992	1/3 of 1 percent.
1993	Do.
1994	3/8 of 1 percent.
1995	Do.
1996	5/12 of 1 percent.
1997	Do.
1998	11/24 of 1 percent.
1999	Do.
2000	1/2 of 1 percent.
2001	Do.
2002	13/24 of 1 percent.
2003	Do.
2004	7/12 of 1 percent.
2005	Do.
2006	5/8 of 1 percent.
2007	Do.
2008 and later	2/3 of 1 percent.

The delayed retirement credit equals the appropriate percent of the PIA times the number of months in which the employee is age 65 or older and for which credit is due.

(c) *Example.* Mr. Jones was qualified for a full age and service annuity when he reached age 65 in January 1985, but decided not to apply for an annuity because he was still working. Mr. Jones stopped working on December 31, 1985, and applied for his annuity to begin January 1, 1986. Based on his earnings, his PIA was $350.50. Since Mr. Jones did not receive an annuity for the 12 months from the month in which he became 65 (January 1985) until the month following the month he stopped working (January 1986), he is due credit for each of those 12 months. The total amount of his DRC's is calculated as follows:

Percent		PIA		No. of months		Unrounded result		Total amount of DRC's
.25%	X	350.50	X	12	=	10.51	=	$10.50

Mr. Jones' PIA increase for DRC's is $361.00 (350.50 + 10.50).

§ 225.35 When a PIA used in computing a retirement annuity can be increased for DRC's.

Delayed retirement credits earned at different times are added to the PIA used in computing a retirement annuity as follows:

DRC's earned for month in	Are added to PIA
Years before the year the employee annuity begins.	On the date the annuity begins.
Year the annuity begins	On January 1 of the year after the annuity begins.
Years after the annuity begins, and before the year the employee attains age 70 (72 before 1984).	On January 1 of the year after the credits are earned.
Year the employee attains age 70 (72 before 1984).	In the month age 70 (or 72) is attained.

§ 225.36 Effect of DRC's on survivor annuities.

(a) *Widow(er), remarried widow(er) or surviving divorced spouse.* Delayed retirement credits that the employee earned are used in computing the tier I component of a widow(er), remarried widow(er) or surviving divorced spouse annuity. All DRC's, including credits earned in the year of death, can be used in computing the widow(er) or surviving divorced spouse annuity beginning with the month of death. Delayed retirement credits for months up to, but not including, the month of death are used.

(b) *Other survivor annuities.* Delayed retirement credits cannot be used in

computing any other survivor annuity based on the deceased employee's record.

Subpart E—Cost-of-Living Increases

§ 225.40 General.

A cost-of-living increase is an automatic increase in a PIA provided under section 215(i) of the Social Security Act. The Social Security Administration determines the percentage amount of any cost-of-living increase paid by the Board.

§ 225.41 How a cost-of-living increase is determined and applied.

Depending on the condition of the social security trust funds, the increase can be based on rises in either the consumer price index as published by the Department of Labor or the average wage index which is the average of the annual total wages used for computing a PIA. The increase is payable when the appropriate index for the third calendar quarter of one year shows an increase of at least three percent over the same index for the third calendar quarter of the previous year (or the last calendar quarter within which a legislated general benefit increase became effective). No increase is payable for the calendar year that immediately follows a year in which a legislated general benefit increase was effective. The increase amount is determined by multiplying the PIA by the percentage increase in the appropriate quarter of a previous year.

§ 225.42 Notice of the percentage amount of a cost-of-living increase.

The percentage amount of the cost-of-living increase is published in the **Federal Register** by the Secretary of Health and Human Services within 45 days of the end of the measuring period used in finding the increase.

§ 225.43 PIA's subject to cost-of-living increases.

The Retirement Tier I, Overall Minimum, Survivor Tier I, Employee RIB and RLS PIA's are adjusted for cost-of-living increases. The remaining PIA's described in Subparts B and C of this part are frozen at the amounts determined under the Social Security Act as in effect on December 31, 1974.

§ 225.44 When a cost-of-living increase is payable.

A cost-of-living increase is payable beginning with December of the year for which the increase is due. The increase is paid in the January payment.

Subpart F—Recomputing PIA's

§ 225.50 General.

After an annuitant begins receiving an annuity, the PIA's may be recomputed as explained in § 225.52. Most recomputations result in an increase in the PIA. The Board pays a recomputed PIA when an increase of at least $1 results. Most recomputations are processed automatically and require no action by the annuitant.

§ 225.51 PIA's that are subject to recomputation.

The following PIA's are subject to recomputation—

(a) Tier I PIA;
(b) Survivor Tier I PIA;
(c) Overall Minimum PIA;
(d) Employee RIB PIA; and
(e) Residual Lump-Sum PIA.

§ 225.52 Reasons for recomputing a PIA.

There are three major reasons for recomputing a PIA:

(a) Recomputation to consider additional earnings.

(b) Recomputation when an employee is eligible for periodic pension payments based on other than railroad or social security earnings.

(c) Recomputation to use a new or different PIA formula, as provided in section 215(f) of the Social Security Act.

§ 225.53 Recomputation to consider additional earnings.

(a) *Additional earnings that cause a recomputation.* (1) *Earnings not included in earlier computation or recomputation.* The most common reason for recomputing a PIA is to include earnings that were not used previously, as described in paragraphs (a)(2) through (a)(4) of this section. The inclusion of these earnings may result in a revised Average Monthly Earnings or revised Average Indexed Monthly Earnings amount and, consequently, cause recomputation of the PIA.

(2) *Earnings in the year an employee becomes entitled to an age annuity or becomes disabled.* Earnings in the year an employee becomes entitled to an age annuity or becomes disabled are not used in the initial computation of the PIA. However, the Board does consider those earnings in a recomputation of the PIA and begins paying the higher benefits at the time described in paragraph (b) of this section.

(3) *Earnings not reported in time to use them in the computation of the PIA.* Because of the way reports of earnings are made, the earnings an employee has in the year before he or she becomes entitled to an annuity, becomes disabled, or dies, might not be reported in time to use them in computing the PIA. The Board recomputes the PIA with the new earnings information and begins paying annuitants the higher benefits based on the additional earnings at the time described in paragraph (b) of this section.

(4) *Earnings after entitlement that are used in a recomputation.* Earnings for a year after an employee becomes entitled to an annuity are used in a recomputation of a PIA when the earnings are higher than those for a year used in the previous PIA computation.

(b) *Effective date of recomputation to consider additional earnings.* A PIA that is recomputed to include additional earnings becomes payable at the latest of the following times:

(1) Date the annuity begins.

(2) January of the year following the year an employee receiving an age annuity attains age 62.

(3) January of the year following the year an employee becomes disabled.

(4) January of the year following the year in which the earnings are earned.

Example: Mr. Jones, a railroad employee, becomes entitled to an age annuity in June 1986, at the age of 62. Although Mr. Jones has earnings of $23,000 in the first five months of 1986, those earnings cannot be used in the initial computation of the Tier I PIA. However, effective with January 1, 1987, the Tier I PIA is recomputed to include the earnings for 1986.

§ 225.54 Recomputation when an employee is eligible for periodic pension payments based on other than railroad or social security earnings.

(a) *Description.* This recomputation serves as a reduction in the PIA for entitlement to a periodic pension based, in part or in whole, on earnings after 1956 not covered under either the Social Security Act or the Railroad Retirement Act. A recomputation for a periodic pension is made in accordance with sections 215(a)(7) and 215(f)(9) of the Social Security Act. A recomputation affecting the Retirement Tier I, Overall Minimum, or Residual Lump-Sum PIA is required when all the following conditions exist—

(1) The employee has less than 30 years of coverage as defined in section 215(a) of the Social Security Act. The years of coverage include railroad and social security earnings;

(2) The employee becomes eligible for an annuity after 1985; and

(3) The employee becomes eligible for the periodic pension payments after 1985 based, in part or in whole, on earnings after 1956 not covered under either the Social Security Act or the Railroad Retirement Act.

(b) *Effective date of recomputation.* The Retirement Tier I, Overall Minimum or Residual Lump-Sum PIA is recomputed when the employee becomes eligible for a periodic pension payment based on other than railroad or social security earnings. However, payment of the recomputed PIA is effective with the month in which the employee becomes entitled to the periodic pension.

§ 225.55 Recomputation to use a new or different PIA formula.

(a) *Description*—(1) *New computation formula.* If a new formula for computing or recomputing PIA's is enacted into law and the annuitant is eligible for the recomputation, the Board will recompute the PIA under the new formula.

(2) *Recomputation under different formula.* In some cases, a PIA may be recomputed under a computation formula different from the formula used in the computation (or earlier recomputation) of the PIA. The annuitant must be eligible for a computation or recomputation under the different formula.

(b) *Effective date of recomputation*—(1) *New computation formula.* A PIA recomputed under a newly enacted formula is effective with the month as directed in the legislation that establishes the new formula. The new PIA formula applies when it produces a PIA that is higher than the amount on which the existing annuity is based.

(2) *Different computation formula.* A PIA recomputed under a different formula is effective with the first month that the different formula produces a PIA that is higher than the PIA on which the existing annuity is based.

§ 225.56 Automatic recomputation.

Periodically, the Board reviews the earnings record of every retired, disabled and recently deceased employee to see if a recomputation of the PIA is necessary. When a recomputation is called for due to a change in the reported railroad or social security earnings, the Board processes it automatically. Increased benefits resulting from a recomputation are paid from the earliest month that the recomputation is effective. The annuitant does not have to request a recomputation to consider additional earnings, although the annuitant may request a recomputation before the automatic recomputation is processed. However, the effective date of the recomputation is the same, whether the recomputation is done automatically or at the request of the annuitant.

§ 225.57 Requesting a recomputation.

An annuitant who meets the conditions for a recomputation may request that his or her PIA be recomputed sooner than it would be recomputed automatically. Providing inclusion of the additional earnings increases the PIA, the Board will recompute the PIA from the earliest permissible date as described in this part.

§ 225.58 Waiver of recomputation.

If the employee or the employee's family are disadvantaged in any way by a recomputation of a PIA to consider additional earnings, a request can be made to waive or give up the right to the recomputation. Such a request must be in writing and be made by every entitled family member. A request for waiver of a recomputation applies only to that recomputation for which the request is made.

Subpart G—Adjusting PIA's

§ 225.60 Adjustment at age 62 when employee is entitled to an annuity based on 30 years of railroad service.

(a) *Description.* The Tier I PIA of an employee who is entitled to an age annuity based on 30 years of railroad service is adjusted when the employee reaches age 62. The Average Indexed Monthly Earnings on which the PIA is based is adjusted by using the year in which the employee attains age 62 as the eligibility year. This adjustment applies to any employee who attained age 60 or acquired 30 years of railroad service after June 30, 1984. The adjustment affects the tier I of the employee and spouse annuity.

(b) *Effective date of adjustment.* A PIA adjustment based on the employee's attainment of age 62 is effective with the first full month in which the employee is age 62. For purposes of a spouse age annuity tier I, the adjusted PIA is used beginning with the first full month both the employee and spouse are age 62.

Dated: March 22, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL-3545-1]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs); States of Connecticut, Massachusetts, New Hampshire, and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the States the authority to implement and enforce, respectively, the New Source Performance Standards (NSPS) set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources, and emissions standards for hazardous air pollutants set out in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs). The EPA hereby notifies the public that it has delegated the authority over certain NSPS and NESHAPs source categories to the State Air Pollution Control Agencies in Region I.

EFFECTIVE DATE: See supplementary information.

ADDRESSES: Application and/or reports required under all NSPS/NESHAPs source categories for which EPA has delegated authority to respective States should be addressed to:

State of Connecticut

Air Compliance Unit, Department of Environmental Protection, 165 Capitol Avenue, Hartford, CT 06106.

State of Massachusetts

Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter Street, Boston, MA 02108.

State of New Hampshire

Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

State of Rhode Island

Division of Air and Hazardous Materials, Department of Environmental Management, 75 Davis Street, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu (APS-2311), Environmental Protection Agency, Region I, Air Management Division, JFK

Federal Building, Boston, MA 02203, (617) 565–3250; FTS 835–3250.

SUPPLEMENTARY INFORMATION: The States of Connecticut, New Hampshire, and Rhode Island were delegated authority for the General Provisions of the NSPS and NESHAPs standards and various Subparts of 40 CFR Parts 60 and 61 in letters from EPA dated September 30, 1982; the Commonwealth of Massachusetts was delegated this authority in a similar letter dated June 25, 1982. These letters detailed the conditions of each delegation, and thereby established a mechanism of automatic delegation of newly promulgated standards when specifically requested by the States. In addition, the delegation agreements, contained in those letters, provide that authority over future revisions to previously delegated standards will automatically be delegated to the State agencies. In accordance with this mechanism, requests for delegation were submitted to EPA and subsequently granted. The purpose of these delegations is to shift primary program responsibility for the newly promulgated Subparts of 40 CFR Parts 60 and 61 from EPA to State governments. Some States do not have full authority over the programs; limitations are noted where appropriate.

Delegations for each State are listed below:

State of Connecticut

Limitations: None, full authority delegated.

Delegations: Subpart of 40 CFR Part 60 as follows: BBB (Rubber Tire Manufacturing), effective November 17, 1988, TTT (Surface Coating of Plastic Parts for Business Machines), effective November 17, 1988.

State of Massachusetts

Limitations: None, full authority delegated.

Delegations: Subparts of 40 CFR Part 61 as follows: N (Inorganic Arsenic Emissions from Glass Manufacturing Plants), effective November 17, 1988.

State of New Hampshire

Limitations: None, full authority delegated.

Delegations: Subpart of 40 CFR Part 60 as follows: BBB (Rubber Tire Manufacturing), effective December 12, 1988, TTT (Surface Coating of Plastic Parts for Business Machines), effective December 12, 1988.

State of Rhode Island

Limitations: Administrative delegation only.

Delegations: Subpart of 40 CFR Part 60 as follows: BBB (Rubber Tire Manufacturing), effective February 15, 1989, TTT (Surface Coating of Plastic Parts for Business Machines), effective February 15, 1989.

Effective immediately, all applications, reports, and other correspondence required under these NSPS and NESHAPs standards should be sent to the above State addresses, as well as to the EPA.

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

Authority: Secs. 111(c) and 112(d) of the Clean Air Act, 42 U.S.C. 7411(c) and 7412(d).

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Arsenic-glass manufacturing, Plastic parts for business machines, Rubber tire manufacturing.

Date: March 3, 1989.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89–7420 Filed 3–28–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 8E3676/R1015; FRL–3544–8]

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide glyphosate and its metabolite in or on the raw agricultural commodity crop group bulb vegetables. This regulation to establish a maximum permissible level for residues of the herbicide in or on the crop group commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: March 29, 1989.

ADDRESS: Written objections, identified by the document control number, [PP 8E3676/R1015], may be submitted to: Public Docket and Freedom of Information Section, Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310 .

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of February 8, 1989 (54 FR 6151), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 8E3676 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of California, Florida, Michigan, and New York.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl) glycine), and its metabolite aminomethylphosphonic acid (AMPA) in or on the raw agricultural commodity onions at 0.2 part per million (ppm). The petition was later amended to propose a tolerance for residues of glyphosate at 0.2 ppm in or on commodities of the bulb vegetable crop group, which consists of the raw agricultural commodities garlic, leeks, onions (green and dry bulb), and shallots.

The tolerance for the bulb vegetable crop group replaces, in part, the existing glyphosate tolerance for root crop vegetables at 0.2 ppm. The root crop vegetable group consists of the raw agricultural commodities garlic, leeks, onions, and shallots, as well as beets, carrots, chickory, horseradish, Jerusalem artichokes, parsnips, potatoes, radish, rutabagas, salsify, sugarbeets, sweet potatoes, turnips, and yams.

The term "root crop vegetables" is a crop group designation that was used prior to the revision of 40 CFR 180.34(f), the Crop Group Regulations, which was published in the **Federal Register** of June 29, 1983 (48 FR 29855). Establishment of the tolerance for bulb vegetables allows the deletion of the existing glyphosate tolerance for root crop vegetables. Glyphosate tolerances for the remaining raw agricultural commodities from the root crop vegetable crop group that do not belong to the bulb vegetable crop group are retained by listing individual tolerances at 0.2 ppm for the following commodities: beets, carrots, chickory, horseradish, Jerusalem artichokes, parsnips, potatoes, radishes, rutabagas, salsify, sugar beets, sweet potatoes, turnips, and yams.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.364 is amended by removing the existing entry for root crop vegetable group and by adding and alphabetically inserting the commodity crop group bulb vegetables and the raw agricultural commodities beets, carrots, chickory, horseradish, Jerusalem artichokes, parsnips, potatoes, radishes, rutabagas, salsify, sugar beets, sweet potatoes, turnips, and yams, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Artichokes, Jerusalem	0.2
* * * * *	
Beets	0.2
Beets, sugar	0.2
* * * * *	
Carrots	0.2
Chickory	0.2
* * * * *	
Horseradish	0.2
* * * * *	
Parsnips	0.2
* * * * *	
Potatoes	0.2
* * * * *	
Radishes	0.2
Rutabagas	0.2
* * * * *	
Salsify	0.2
* * * * *	
Sweet potatoes	0.2
* * * * *	
Turnips	0.2
* * * * *	
Vegetables, bulb	0.2
* * * * *	
Yams	0.2
* * * * *	

[FR Doc. 89–7421 Filed 3–28–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 372

[OPTS–400013A; FRL–3493–9]

Melamine; Toxic Chemical Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting melamine from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of melamine that occur during the 1988 calendar year, and releases that will occur in the future. This relief applies only to reporting requirements under section 313 of Title III of SARA.

DATE: This rule is effective March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Acting Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, 401 M Street, SW., Mail Stop OS–120, Washington, DC 20460. Toll free: 800–535–0202, in Washington, DC and Alaska, (202) 479–2449.

SUPPLEMENTARY INFORMATION:

I. Description of Petition and Regulatory History

The Agency received a section 313(e) petition to delete melamine, CAS No. 108–78–1, from the list of toxic chemicals in 40 CFR 372.65. The petition from Melamine Chemicals, Inc. was received on October 7, 1987, and at the request of the submitter, the statutory timeframe for response was suspended for 69 days. After reviewing the petition, EPA published the proposed rule to grant the petition in the **Federal Register** of June 20, 1988 (53 FR 23128). After reviewing the petition and additional related information, EPA concluded that melamine did not meet the listing criteria related to acute human health effects, chronic health effects, or environmental toxicity. These criteria for listing chemicals are in section 313(d) of Title III of SARA. It is the Agency's determination that available data do not demonstrate that melamine causes or can reasonably be anticipated to cause significant adverse health or environmental effects. This determination is consistent with EPA's prior determination under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the oncogenic risk posed by melamine, the major metabolite of the insect growth regulator cyromazine, is nonexistent or, at worst, extremely low (50 FR 20373). While release to the environment is possible, EPA has estimated that typical emissions will not cause exposures of concern. The proposed rule contains additional information on the petition process under section 313 of Title III of SARA, as well as, a detailed summary of the Agency's review of the petition.

EPA received two comments concurring with the proposed rule to delete melamine. The comments were from American Cyanamid Company and Browning-Ferris Industries. Based upon evaluation of the petition, available toxicity and exposure information, and the comments, EPA affirms its determination that melamine does not meet any of the criteria listed in section 313(d). Therefore, EPA is deleting melamine from the list of chemicals subject to reporting under section 313 of Title III of SARA.

II. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA might judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more. This rule will decrease the impact of the section 313 reporting requirements on covered facilities and will result in cost-savings to industry, EPA, and States.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of melamine. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: March 20, 1989.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR Part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65 (a) and (b) are amended by removing the entire entry for melamine under paragraph (a) and removing the entire CAS No. entry for 108–78–1 under paragraph (b).

[FR Doc. 89–7422 Filed 3–28–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Gen. Docket No. 87–24; FCC 89–72]

Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission responds to several petitions for reconsideration of its *Report and Order* (53 FR 27167, July 19, 1988) which reinstituted a form of syndicated exclusivity (syndex) rules, extended the scope of the network non-duplication rules and modified them to conform to other programming exclusivity provisions, and established a one-year transition period, during which the exercise of exclusivity rights under the new rules would be precluded until August 18, 1989. Through this action, the Commission generally upholds and clarifies its decision in the *Report and Order (R&O)*, but extends the transition period through December 31, 1989.

EFFECTIVE DATE: May 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average eight minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

This is a summary of the Commission's *Memorandum Opinion and Order*, Gen. Docket No. 87–24, adopted February 22, 1989, and released March 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Steeet, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. This *Memorandum Opinion and Order* (*MO&O*) responds to twelve petitions for reconsideration of the *R&O*, which reinstituted a form of syndicated exclusivity rules and extended the scope of the existing network non-duplication rules. In adopting the *R&O*, the Commission also established a one-year transition period, which precluded exercise of exclusivity rights under the new rules until August 18, 1989.

2. In response to the *R&O*, twelve petitions for reconsideration were filed, followed by six oppositions to those petitions and fourteen replies. The interests of each affected segment of the market were represented: broadcast, cable, distant signal, and program syndication. The cable interests uniformly call for reversal of the syndex rules, while the broadcast interests firmly support them. One superstation owner, Turner Broadcasting System, Inc. (TBS), has accepted the syndex rules in principle, while another, Tribune Broadcasting Company (Tribune), is opposed to them. The two petitioning syndicators, LBS Communications Inc. (LBS) and Orbis Communications Inc., also oppose the syndex rules.

3. The issues raised by the petitions generally can be broken down into five categories, most relating to the new syndex rules. Those categories are: (1) Whether the syndex rules should be rescinded; (2) whether the one-year transition period should be modified; (3) requests for new categorical exceptions to the syndex rules; (4) requests for other modifications to the rules; and (5) requests for clarification. We deal with each issue separately below.

4. Two types of arguments have been raised in support of rescinding the syndex rules. The first type contends that under the current state of the law, the Commission is statutorily or constitutionally prohibited from reimposing any form of syndex rules under any circumstances. The *R&O*, however, dealt extensively with the issue of the Commission's authority to promulgate new syndex rules, and concluded that adoption of the rules in their current form was well within our statutory and constitutional authority, consistent with the Copyright Act, and not prohibited by the Cable Act or the first amendment to the Constitution. None of the petitioners raised any new arguments in questioning our authority

to reimpose the syndex rules. In addition, we also take official notice of a significant recent amendment to the Communications Act (enacted in conjunction with amendments to the Copyright Act) which supports our jurisdictional conclusions. Section 203 of the Satellite Home Viewer Act of 1988, Pub. L. 100–667, 102 Stat. 3949, 3958 (November 16, 1988) explicitly acknowledges the current syndex rules, and the legislative history confirms the Commission's authority to promulgate them. *See* H. Rep. 887, Part 2, 100th Cong., 2d Sess. 26 (1988); H. Rep. No. 887, Part 1, 100th Cong., 2d Sess. 27–29 (1988).

5. The second type of argument used by the petitioners requesting repeal of the syndex rules raised objections to the methods by which the Commission reached its decision to adopt new syndex rules. This type of objection to our authority took two basic forms. First, some petitioners asserted that we compiled an insufficient factual record to support reimposition of syndex rules, and that our use of such a record reflects a threshold error regarding the permissible legal bases for reimposing such rules. Second, some petitioners challenged our adoption of the syndex rules by alleging that we failed to provide a *bona fide* opportunity for comment.

6. On the issues of the sufficiency of the record and the permissible legal bases for our action, petitioners opposing the syndex rules contended that the evidence either fails to indicate any harm or affirmatively demonstrates that no harm has occurred. They accused the Commission of: (1) Accepting flawed studies favoring syndex regulation; (2) discounting sound opposing studies on the basis of minor perceived errors; (3) giving too little weight to evidence of the negative impact that reimposing syndex rules will have; and (4) ignoring the implications of the growth and profitability of the independent television and syndicated programming markets. LBS and Tribune contended, in essence, that unless the Commission can statistically document specific problems that have arisen since the repeal of the former syndex rules, we cannot impose new, burdensome syndex rules. The Community Antenna Television Association (CATA) argued that the Commission's alleged disregard for the negative impact of syndex on consumers and the cable industry demonstrates that our ultimate goal is to correct an imbalance to competition or to supercede the copyright law, goals which are "not within the Commission's mandate." Similarly, the National Cable Television Association (NCTA) and Cole, Raywid & Braverman (Cole/Raywid) argued that we are precluded from reimposing syndex rules if the purpose is to correct unfairness that may result from the cable copyright compulsory license.

7. The Commission addressed and rejected in the *R&O* the argument that the goal of achieving a full and fair competition among providers of syndicated programming to the public is purely a copyright issue and thus an impermissible basis for promulgating the syndex rules. Because petitioners have added nothing new, we again reject that argument. We emphasize that petitioners are simply wrong when they imply that we previously held that syndex rules involve purely a copyright issue if based on an unfair competition rationale. The statements which petitioners cited from our earlier proceedings were aimed at a retransmission consent proposal, which would have effectively replaced the compulsory license scheme in order to achieve competitive parity in connection with the costs that the cable and broadcasting industries pay for programming. The syndex rules, on the other hand, are not designed to alter the basic competitive structure under the compulsory license scheme, but instead address the communications aspects of distant signal programming that the Copyright Act anticipated the FCC would continue to handle. The Satellite Home Viewer Act of 1988 (1988 Act), which amends both the Communications Act and the Copyright Act, reflects Congressional recognition of the Commission's authority to address and resolve such issues. In fact, the 1988 Act explicitly requires us to examine similar issues with respect to satellite programming, and to promulgate syndex rules in that context if feasible.

8. In reinstituting the syndex rules, the Commission is attempting to remove unnecessary impediments on broadcasters' right to contract (thereby enhancing competition) and to provide an environment that is more conducive over the long run to the production, diversity, responsiveness, quality, and distribution of programming. These goals, which are communications policy goals and not copyright matters beyond our jurisdiction, are well within our mandate. Moreover, the existing marketplace structure, which has lacked such competitive balance and fairness, and which will not be capable of producing such an environment over the long run, is thus a "harm" that we are empowered to correct. The Commission, in repealing the former syndex rules in 1980, misjudged the way the marketplace would develop in a number of ways, and consequently, our choices in structuring the best regulatory framework were misguided. We come to this conclusion based on substantial (and in some cases indisputable) empirical evidence developed since 1980. This evidence impels us to reconsider the facts and determine what our mandate requires us to do.

9. In arguing that the Commission lacks a sufficient empirical record on which to base reimposition of the syndex rules, petitioners mistakenly focused solely on symptoms of the overall harm we intend to correct. They ignored the long-term tangible benefits that should flow from reinstituting the syndex rules, as well as the more intangible benefits of pursuing a policy designed to remove unnecessary impediments on the marketplace and its participants. Consequently, we reject the petitioners' basic point that we weighed incorrectly the benefits of syndex rules against their costs.

10. Similarly, petitioners misjudged the level of certainty the Commission must have regarding these symptoms before reinstituting the rules. Specifically, we are not required to determine to a mathematical certainty the degree of harmful audience diversion that has occurred (or will occur) or the level at which the program supply would have been had syndex rules been in place since 1980. As we explained in the *R&O*, the effect on program supply is particularly difficult to demonstrate empirically, but our conclusions are fully supported by our economic analysis and the empirical evidence that is possible to obtain. We thus reaffirm that the record provides sufficient evidence to conclude that substantial harmful diversion is taking place and that the environment for program supply will be improved with syndex protection.

11. With respect to the petitioners' more specific allegations in this area, we reject the contention that we accepted without critical evaluation the evidence that favored syndex regulation. As we acknowledged in the *R&O*, statistical errors were not confined to one side of the debate, but the evidence on the whole clearly supports a conclusion that substantial audience diversion is a problem which needs to be corrected.

12. Petitioners also failed to demonstrate that the Commission disregarded evidence contradicting the conclusion that an absence of syndex protection causes harm. For the most part, petitioners' assertion that we disregarded such evidence consists of

conclusory statements that we ignored or summarily dismissed one study or another. As we stated in the *R&O*, we "examined each * * * submission fully and carefully." For example, some petitioners argued that we ignored evidence regarding growth in the independent television and syndicated programming markets. We readily acknowledged, however, that these markets are burgeoning, but rejected this fact as proof that the absence of syndex does not lower the optimal levels of program supply (or will not lower them over the long run). None of the petitioners presented any new arguments or evidence to convince us that we erred in this regard.

13. Similarly, petitioners also failed to demonstrate that we did not give proper consideration to facts that bear on the negative impact that reinstitution of the syndex rules will have. The Commission recognized these costs and burdens in the *R&O*, but on the whole concluded that the public interest would be best served by reinstituting a form of syndex rules. One issue on which petitioners focused was compliance costs at the beginning of the new regime. We conclude that, with minor adjustment, these costs are manageable and that the rules are structured in such a way as to minimize such costs as much as possible without undermining effective and fair implementation of the rules.

11. While the *R&O* did not include a separate analysis of the interplay between syndex rules and the barter syndication market, our analysis applies equally to barter and cash syndication. we recognize, however, that barter is a significant component of the syndication market, and that the *R&O* did not elaborate extensively on this point. Accordingly, the full text of this *MO&O* contains a separate section featuring our analysis of the arguments raised by petitioners seeking an exception for bartered programming.

15. Several petitioners alleged that we did not have authority to adopt the syndex rules because we failed in two basic respects, to provide a *bona fide* opportunity for comment. First, Cole/Raywid and CATA claimed that our threshold decision to reinstitute some form of syndex rules was predetermined, that we had already decided to take this step regardless of what the record would show or what legal arguments would be made. Thus, Cole/Raywid accused the Commission of having conducted a "sham proceeding." Tribune indicated that the Commission denied the parties a meaningful opportunity to comment by uncritically accepting flawed evidence and ignoring meaningful evidence tending to rebut the data on which we relied.

16. Second, NCTA and Cole/Raywid, in essence, asserted that the Commission violated the requirements of the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*, by failing to set forth specific rules for comment before adopting them. According to these petitioners, we thus denied the public an opportunity for meaningful comment.

17. Petitioners' assertion that the Commission decided to reinstitute the syndex rules prior to review of the evidence is without any validity and is hereby rejected. For the reasons discussed above, we also reject Tribune's argument that the public was denied an opportunity to comment because of the manner in which we evaluated the evidence. We further deny reconsideration of petitioners' APA-based arguments. The APA does not require publication of a specific text of proposed rules prior to adoption. Furthermore, in this proceeding, the Commission's former syndicated exclusivity rules were the starting point for our analysis in the *Notice of Inquiry/Notice of Proposed Rule Making* (*Notice*) in this proceeding. (*See* 52 FR 15738, April 30, 1987.) The *Notice* described those former syndex rules in full. To the extent we envisioned that the proposed rules might depart from the former rules, the *Notice* described with specificity the issues upon which we sought comment. Accordingly, the Commission believes that no party was denied the opportunity to comment fully on all of the central issues in this proceeding. Last, we reject CATA's assertion that further proceedings are necessary to provide opportunity for review of the technological difficulties of compliance with syndex. There has been much discussion of this issue, both during the comment phase and on reconsideration. Accordingly, we see no need for a further comment period.

18. In response to petitioners who requested that the one-year transition period be lengthened beyond its current August 18, 1989, closing date, the Commission extends that transition period through December 31, 1989. We do not base this decision on arguments made regarding the cost and availability of equipment that may be necessary for cable operators to comply with their syndex obligations or regarding the amount of unprotected programming a distant signal provider may currently have in its inventory. Petitioners have failed to present any convincing new evidence or arguments in these regards to justify a change in the transition period. However, given the number of petitions for reconsideration, the numerous issues that have been raised, the clarifications that were necessary and the adjustments we are making, we consider it appropriate that the transition period be extended to some extent. In addition, we acknowledge that the notification requirements for "preexisting contracts" (*i.e.*, contracts entered into before August 18, 1988) could create situations which unnecessarily truncate the preparation time for cable operators and give distant signal providers less opportunity to ease the effects of the rules. By extending the end of the transition period through December 31, 1989, and establishing a date certain of June 19, 1989, by which broadcasters must provide notice of syndex rights in preexisting contracts, we have ensured that cable operators and distant signal providers will be given ample opportunity to assess and adapt to the immediate burdens of complying with our syndex rules.

19. In the *R&O*, the Commission had intended that local broadcasters be required to provide notice to cable operators of preexisting contracts that are enforceable "as is" no later than 60 days before the end of the old transition period (*i.e.*, by June 19, 1989). We also intended that the same requirement apply to preexisting contracts that merely needed written acknowledgement in order to be effective. We intended a somewhat different treatment for preexisting contracts that require amendment (as opposed to acknowledgement) in order for the broadcaster to assert syndex rights. Specifically, these contracts were to be treated like new contracts, with the broadcaster giving notice within 60 days of the execution of the amendment. We recognize that this treatment of preexisting contracts might have placed cable operators in the position of not knowing what the scope of their burden would be until approximately 60 days before the end of the old transition period. As stated above, we are therefore extending the end of the transition period through December 31, 1989, and retaining a June 19, 1989, notification deadline for preexisting contracts. The June 19, 1989, deadline will not only apply to preexisting contracts that are enforceable "as is" or that simply require acknowledgement, but also to preexisting contracts that require amendment in order to be enforceable, since broadcasters may have reasonably believed that they had until this date in which to provide notice of such amended contracts. Notice of

such amended contracts must therefore be given by June 19, 1989, or within 60 days after the amendment is executed, whichever is later.

20. Various petitioners requested two new categorical exceptions to the syndex rules. We reject the first requested exception, for syndicated programming provided on a bartered basis, because we do not consider that bartered programming represents a special case, and because we believe the concerns expressed by petitioners who have argued for this exception have not properly analyzed the dynamics of the marketplace and have therefore assigned many nonexistent costs to the syndex regime.

21. The Commission also rejects the second requested exception to the syndex rules, for "warehoused" programming. In the *R&O* we stated that there is no evidence that warehousing is an anticompetitive problem requiring our attention, and we discussed at some length why this practice is uneconomical and unlikely to occur. NCTA attempted to draw a distinction between "warehousing" that is done for anticompetitive purposes (which NCTA apparently believes is not likely to occur), and warehousing that is not anticompetitive, but which should be limited because it denies the public a chance to view the program. The Commission does not view warehousing in the second category as a cause for concern. We believe a broadcaster who warehouses a program for *bona fide* purposes does so to preserve or maximize its value, which in turn maximizes the value of the program supply. This result is one of the linchpins for increasing diversity—a strong public interest goal and of great benefit to the consumer—and hence for reimposing the syndex rules. Another linchpin is, of course, reestablishing a competitive balance to the marketplace. NCTA's proposal to allow an exception to the syndex rules for warehoused programming would undermine both goals. Finally, as stated in the *R&O*, in the unlikely event that we are presented in the future with evidence of anticompetitive warehousing practices, we can revisit and amend the rules.

22. Petitioners have also requested a number of different changes in the notification requirements. For the most part, we deny these requests because they upset the careful balance we have struck in allocating the burdens of compliance. However, we will clarify certain aspects of the notification rules in response to these requests. To be entitled to syndex protection, notice must be furnished to a cable system within 60 days of the signing of the contract granting syndex rights. If a broadcaster fails to provide notice to a cable system within 60 days of the signing of a contract containing syndex rights, all of these rights under the contract are lost vis-a-vis that system (although they can be recaptured by recontracting for them). If proper notice has been given, the broadcaster is still not entitled to protection until at least the first day that begins 60 days after the cable system has received this notice.

23. TBS proposed that we give distant signal providers the right to obtain a notice from a local broadcaster that it intends to assert syndex rights against distant signal programming carried on a cable system. We reject this proposal because, *inter alia*, it makes more sense for distant signal providers to obtain this information from their own program suppliers or from the cable systems that carry this signal.

24. NCTA proposed a requirement that brodcasters identify in the schedules of each distant signal provider carried by the cable system the programming that should be deleted (including the time periods in which the provider is running this programming), or, alternatively, a requirement that broadcasters renew their protection requests on a regular basis. Neither of these changes is warranted. We have weighed the pros and cons and believe our original decision achieves the best balance, given the entire framework we have crafted. With respect to NCTA's principal proposal, we note that the provisions of §§ 76.94(c) and 76.155(c) cite sources of information upon which a cable operator may rely in a legal sense in determining which programs must be deleted pursuant to a network non-duplication or snydex request. Thus, the rules are structured to facilitate a cable operator's ability to match protection requests with distant signal programming that must be deleted.

25. NCTA's alternative proposal—to require broadcasters to renew their protection requests on a regular basis—is unnecessary, serving only to multiply the paperwork for all concerned. We will, however, require a broadcaster to correct or update certain protection requests in the event the information supplied to the cable system has changed, and we are amending the rules accordingly.

26. The next proposed modification to the notification requirements concerned the network non-duplication rules. Specifically, these rules contain two requirements that track the language of the syndex rules, but which are assertedly unworkable in the network context: § 76.94(b)'s requirement that notice be given to cable operators 60 days within the signing of a contract that contains network non-duplication rights, and § 76.94(a)(2)'s requirement that this notice specify the "name of the program or series (including episodes where necessary) for which protection is sought." The basic difficulty with these requirements is that network affiliates (and indeed the networks) typically have no way of knowing what programs or series the network will carry at the time the affiliation agreement is signed. Thus, compliance with the content requirements of the notification rules within the 60 day (within signing) period is assertedly impossible.

27. Our original intent in conforming the network non-duplication rules to the syndex rules was to render compliance by cable operators as easy and straightforward as possible. The submissions before us, however, clearly demonstrate that, at least in some instances, the syndex framework cannot be applied wholesale to the network context. Requiring identification of specific programs at the time an affiliation agreement is signed would require a restructuring of the traditional network-affiliate relationship, a result we neither intended nor believe is advisable. Accordingly, the new network non-duplication rules must be modified.

28. In situations where a network affiliation agreement generally gives exclusive rights to network programming but does not specify programs, we will require that the affiliate give notice to the cable operator within 60 days of the signing of the agreement. Further information beyond the fact of the affiliation is necessary, however, if a cable system is to delete the appropriate imported duplicate signal and substitute alternative product. We will therefore require the affiliate to identify the time periods for which it seeks non-duplication protection at the same time it provides affiliation notification, that is, within 60 days of signing the affiliation agreement, and in no event less than 60 days before protection is to begin. We will also require the local affiliate to provide notice of the extent and duration (*e.g.*, simultaneous, same-day, seven day, etc.) of the non-duplication protection that has been agreed upon by the network and affiliate. In the event the local affiliate obtains an increase in the hours of protection it has specified to a cable operator, the affiliate must give the operator at least 60 days advance notice. Thus, an affiliate must notify

cable systems when it decides to clear a network series or an individual network program during a time slot for which it has not previously sought protection.

29. On the other hand, if an affiliate does not in fact carry network programming during the hours previously requested for protection (*e.g.*, if the affiliate preempts a program), the affiliate must give the cable system notice as soon as possible—by telephone, telegraph, facsimile, overnight mail or similarly expedient means. The notice shall specify whether the reduction in hours will occur on one day only or whether it will continue on a regular basis, and if so, for how long. Similarly, we will require affiliates to notify local cable systems as soon as possible when the affiliate decides to carry network programming on a time-delay basis.

30. The above-described modifications to the network non-duplication rules do not apply in cases where the initial agreement between network and affiliate identifies specific programs. In such cases, there is no reason for a deviation from the rules set forth in the *R&O*.

31. Finally, because of our modifications of the non-duplication rules, we will require that affiliates seeking protection by virtue of an affiliation agreement entered into before the effective date of this *MO&O* provide notice to the affected cable operator no later than June 19, 1989, the date on which similar syndicated exclusivity notices are due. For affiliation agreements entered into after the effective date of this *MO&O*, the affiliate must provide the necessary notice no later than 60 days after entering into the relevant agreement. In addition, the same effective date for enforcing syndex rights will apply to network non-duplication rights under the modified rules (*i.e.*, January 1, 1990). Because network non-duplication protection will now extend to non-simultaneous broadcasts, cable operators will face similar burdens in program switching and substitution as they face in complying with the syndex rules. Accordingly, we will not retain the August 18, 1989, effective date for the modified network non-duplication rules, but will extend the date for compliance with these rules to 12:01 a.m., January 1, 1990. Until January 1, 1990, we will continue the regulatory *status quo*, that is, network non-duplication protection will be governed by the rules in effect on May 18, 1988.

32. Four other modifications to the rules proposed by various petitioners are rejected. First, proposals were made to change the requirement that, for a station licensee to be eligible to invoke syndex rights based on a preexisting contract, the contract must contain a clear and specific reference to the licensee's authority to exercise exclusivity rights as to specific programming against cable carriage in the event the government reimposes syndex protection. Our decision to create this requirement was based on a careful assessment of the benefits of expeditious implementation of the syndex regime and of the need to give broadcasters what they had bargained for before the syndex rules were promulgated, balanced against the need for a smooth transition to a syndex regime with a minimum of disruption to reasonable reliance interests of distant signal providers and others. We believe we established the appropriate middle ground.

33. Second, TBS proposed that we adopt a new regulation that allows a distant signal provider to certify to a cable system (when appropriate) that a local broadcaster cannot assert exclusivity rights against a syndicated program carried on the distant signal, so that the system could rely on such a certification to reduce the risks of incurring sanctions in the event the system resolved an exclusivity dispute between the local broadcaster and the distant signal provider in favor of the provider. NCTA also sought to reduce the risks to cable operators, by requesting a "good faith" exception to the rules. Neither of these changes in the rules is justified. Distant signal providers can fashion an effective private remedy that should provide a result similar to TBS' certification proposal. That is, we would permit a superstation to agree to indemnify the cable operator for monetary exposure in the event the superstation erroneously claimed that one of its programs was not subject to deletion. To guard against abuse, however, we will include a provision in the rules specifying that use of such contracts is permitted only in the limited circumstances in which a superstation has a reasonable basis for concluding that program deletion is not required. NCTA's "good faith" proposal is also unnecessary since sanctions under the Communications Act depend on willful or repeated behavior.

34. Third, we deny requests for an exception to Section 76.161 that would limit the amount of sports programming or number of motion pictures that a cable system could substitute in a given day to replace deleted programming. These requests were based on a misunderstanding of how we intended this section to operate, and therefore the relief sought is unnecessary. We will, however, modify the section simply to clarify our original intent, that is, a cable operator may carry a substituted program for a distant signal provider's program that the operator is required to delete, the substituted program may be carried until completion, but the operator must return to the regularly carried signal after completion of the substituted program even if the return results in program interruption, if additional copyright liability is to be avoided.

35. Fourth, we deny NCTA's proposal that the exception for cable systems serving fewer than 1000 subscribers act to exempt a larger system operating in the same community as an exempt system. The reason for NCTA's proposal—fears of competitive imbalance—are largely misplaced, and we therefore do not believe that implementation of the proposal is warranted. Moreover, one of the reasons for exempting only these small systems was to avoid placing upon them equipment costs that would have a greater impact, on a per subscriber basis, than the costs the larger systems would incur. In light of this greater relative burden, we do not believe that any marginal competitive advantage these smaller systems might gain under the exemption justifies NCTA's proposal to extend the exemption to certain larger systems.

36. The parties in this proceeding also requested a number of clarifications of the *R&O* and rules adopted therein. First, clarification was sought on the "geographic zone" of network non-duplication and syndex protection in hyphenated market situations. Our intention was to harmonize the geographic limits of syndex with those of our territorial exclusivity rules. Thus, if a station secures the maximum exclusivity allowed under the rules, it is entitled to enforce such exclusivity against all cable systems within the 35-mile zone of each community in the hyphenated market. We amend the "Notes" to §§ 76.92 and 76.151 accordingly.

37. Second, we inadvertently deleted § 76.95(c) of the Rules when we amended the network non-duplication rules. We therefore reinstate this provision (redesignated as § 76.95(b)).

38. Third, to correct a slight discrepancy between the contractual language that we stated would be necessary to invoke syndex protection for new contracts and the language specified in § 76.159, we amend that section to accord with our statements that announced the decision to reimpose syndex rules.

39. Fourth, questions have been raised about the requirement in § 76.159 that a station have "a contract or other written indicia that it holds syndicated exclusivity rights" in order to invoke such rights. Specifically, several parties asked whether a standardized purchase order will suffice, and how to deal with situations where a syndicated program is licensed or delivered to a local station prior to the signing of any contract. A purchase order that is considered a contract under applicable state law will clearly constitute "a contract or other written indicia" granting syndex rights if it contains the requisite language. In situations where the paperwork is done after licensing or delivery, the notice provision will remain geared to the signing of a contract or other written indicia.

40. Finally, we clarify that a cable operator's right under §§ 76.94(d) and 76.157 to a copy of the broadcaster's contract language granting exclusivity rights will not act as an automatic stay of the 60-day (before commencement of protection) notice requirement. If a cable system has a strong interest in seeing the contract language, it can make the request upon receipt of the notice. We see no need to incorporate this clarification into the rules, however.

41. In crafting the new syndex and network non-duplication rules, the Commission attempted to work a balance—a balance of costs, interests, and rights. For the most part we have retained this balance on reconsideration, but we have made adjustments where necessary. We are convinced that the new regime will herald a better day for broadcasters, cable operators, program suppliers, the video marketplace and, most important, the public.

Final Regulatory Flexibility Analysis Statement

42. The slight modifications we are adopting here to the rules promulgated by our *R&O* have not changed our Final Regulatory Flexibility Analysis (Analysis) which was set forth in the *R&O* and sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (codified at 5 U.S.C. 601 *et seq.*, (1981)). No parties have requested reconsideration of this Analysis.

Ordering Clauses

43. Accordingly, it is ordered, That Part 76 of the Commission's Rules and Regulations is amended as set forth below, subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980.

44. *It is further Ordered*, That the petitions for reconsideration and/or clarification ARE GRANTED to the extent indicated herein, and in all other respects ARE DENIED.

45. *It is further Ordered*, That the amendments to the Commission's Rules and Regulations shall become effective on May 5, 1989.

46. Authority for the action taken herein is contained in Sections 4(i), 4(j), 302 and 303 of the Communications Act of 1934, as amended, and Section 1.429 of the Commission's Rules.

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Amendments of Program Exclusivity Rules

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—[AMENDED]

1. The authority citations for Part 76 continues to read as follows:

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

2. Section 76.92 of the rules is amended by revising the Note to read as follows:

§ 76.92 Network non-duplication; extent of protection.

* * * * *

Note: With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m), except that small market television stations shall be entitled to a secondary protection zone of 20 additional miles. To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) for each named community in that market.

3. Section 76.94 is revised to read as follows:

§ 76.94 Notification.

(a) In order to exercise non-duplication rights pursuant to § 76.92, television stations shall notify each cable television system operator of the non-duplication sought in accordance with the requirements of this Section. Except as otherwise provided in paragraph (b) of this section, non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought; and

(3) The dates on which protection is to begin and end.

(b) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected cable systems within 60 calendar days of the signing of such a contract. In the event the broadcaster is unable based on the information contained in the contract, to furnish all the information required by paragraph (a) of this section at that time, the broadcaster must provide modified notices that contain the following information:

(1) The name of the network (or networks) which has (or have) extended non-duplication protection to the broadcaster;

(2) The time periods by time of day (local time) and by network (if more than one) for each day of the week that the broadcaster will be broadcasting programs from that network (or networks) and for which non-duplication protection is requested; and

(3) The duration and extent (*e.g.*, simultaneous, same-day, seven-day, etc.) of the non-duplication protection which has been agreed upon by the network (or networks) and the broadcaster.

(c) Except as otherwise provided in paragraph (d) of this section, a broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice (as described in paragraphs (a) or (b) of this section, whichever is applicable) to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster.

(d) A broadcaster shall provide the following information to the cable television system under the following circumstances:

(1) In the event the protection specified in the notices described in paragraphs (a) or (b) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to

paragraph (b) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

(2) In the event the protection specified in the modified notices described in paragraph (b) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

(e) In determining which programs must be deleted from a television signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation.

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The broadcaster requesting exclusivity.

(f) A broadcaster exercising exclusivity pursuant to § 76.92 shall provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

4. Section 76.95 is amended by redesignating the sole paragraph of the section as paragraph (a), and adding new paragraph (b) to read as follows:

§ 76.95 Exceptions.

* * * * *

(b) Network non-duplication protection need not be extended to a higher priority station for one hour following the scheduled time of completion of the broadcast of a live sports event by that station or by a lower priority station against which a cable community unit would otherwise be required to provide non-duplication protection following the scheduled time of completion.

5. Section 76.97 is revised to read as follows:

§ 76.97 Effective dates.

The provisions outlined in §§ 76.92 through 76.95 shall become enforceable on January 1, 1990. The rules in effect on May 18, 1988, will remain operative until January 1, 1990.

6. Section 76.151 is amended by revising the Note to read as follows:

§ 76.151 Syndicated program exclusivity; extent of protection.

* * * * *

Note: With respect to each syndicated program, the geographic zone within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m). To the extent rights are obtained for any hyphenated market named in § 76.51, such rights shall not exceed those permitted under § 73.658(m) for each named community in that market.

7. Section 76.155 is amended by revising introductory paragraph (b) and adding a new paragraph (d), to read as follows:

§ 76.155 Notification.

* * * * *

(b) Broadcasters entering into contracts on or after August 18, 1988, which contain syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. Broadcasters who have entered into contracts prior to August 18, 1988, and who comply with the requirements specified in § 76.159 shall notify affected cable systems on or before June 19, 1989; provided, however, that with respect to such pre-August 18, 1988, contracts that require amendment in order to invoke the provisions of these rules, notification may be given within sixty calendar days of the signing of such amendment. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

* * * * *

(d) In the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

8. A new Section 76.158 is added to read as follows:

§ 76.158 Indemnification contracts.

No licensee shall enter into any contract to indemnify a cable system for liability resulting from failure to delete programming in accordance with the provisions of this subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this subpart.

9. Section 76.159 is revised to read as follows:

§ 76.159 Requirements for invocation of protection.

For a station licensee to be eligible to invoke the provisions of this subpart, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after August 18, 1988, must contain the following words: "the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Compulsory Copyright License, as provided in § 76.151 of the FCC rules [or 'as provided in the FCC's syndicated exclusivity rules']." Contracts entered into prior to August 18, 1988, must contain either the foregoing language or a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against cable television broadcast signal carriage by the cable system in question upon the contingency that the government reimposed syndicated exclusivity protection. In the absence of such a specific reference in contracts entered into prior to August 18, 1988, the provisions of these rules may be invoked only if (a) the contract is amended to include the specific language referenced above or (b) a

specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this Section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

10. Section 76.161 is revised to read as follows:

§ 76.161 Substitutions.

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's rules, such community unit may, consistent with these rules and the sports blackout rules at 47 CFR 76.67, substitute a program from any other television broadcast station. Programs substituted pursuant to this section may be carried to their completion.

11. Section 76.163 is revised to read as follows:

§ 76.163 Effective dates.

No cable system shall be required to delete programming pursuant to the provisions of §§ 76.151 through 76.159 prior to January 1, 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-7386 Filed 3-28-89; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1135

[Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided to adjust the quarterly Rail Cost Adjustment Factor (RCAF) for productivity in order to refine the cost recovery process. Addition of a productivity adjustment will convert an input index to an output index. The productivity adjustment will be calculated from the total freight expenses, rents and taxes of the Class I line-haul railroads and data from the ICC Waybill Sample. Initially a five-year time period will be used to calculate a moving average rate of productivity change. The adjustment will be calculated annually and will be phased in on a compounded basis over four consecutive quarters. The adjustment shall be applied beginning with the second quarter 1989 RCAF. Addition of a productivity adjustment was proposed in a notice of proposed rulemaking served November 17, 1988 (53 FR 47758, November 23, 1988).

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354 or Robert C. Hasek (202) 275-0938. (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357 or 4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721).

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1135

Administrative practice and procedure, Railroads, Reporting and record keeping requirements.

Decided: March 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice Chairman Simmons commented with a separate expression. Commissioner Phillips concurred in part with a separate expression. Commissioner Lamboley dissented in part with a separate expression. Chairman Gradison recused herself in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

Title 49, Part 1135 of the Code of Federal Regulations is amended as follows:

PART 1135—RAILROAD COST RECOVERY PROCEDURES

1. The authority citation for Part 1135 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10707a; 5 U.S.C. 553.

2. Section 1135.1(b) is amended by adding the following language at the conclusion of § 1135.1(b):

§ 1135.1 Quarterly adjustment of rates.

* * * * *

(b) * * * Additionally, AAR shall file an index adjusted for productivity changes. The adjustment will be made by applying the multi-year average annual growth in productivity spread evenly over four quarters, compounded each quarter. Productivity adjustments shall compound in the same manner as rate changes.

3. Section 1135.1(c) is revised to read as follows:

(c) The Association of American Railroads must file its calculations with the Commission on the fifth day of the last month of the prior quarter (or the closest business day if the fifth is a Saturday, Sunday or holiday). The calculations are to be for the mid-point of the next quarter.

* * * * *

[FR Doc. 89-7395 Filed 3-28-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 59
Wednesday, March 29, 1989

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Public Financial Disclosure by Executive Branch Officials; Draft Recommendation

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative conference's Special Committee on Ethics in Government has under consideration a draft recommendation on public financial disclosure by executive branch officials. Interested persons are invited to comment on the draft recommendation.

DATES: Please submit comments by April 25, 1989.

ADDRESS: Send comments to Michael W. Bowers, Office of the Chairman, Administrative conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, (202) 254–7065.

SUPPLEMENTARY INFORMATION: The Administrative conference's Special Committee on Ethics in Government has under consideration a draft recommendation on public financial disclosure by executive branch officials. The proposed recommendation is based on a report written by Professor Thomas D. Morgan, Professor of Law at Emory University. The text of the draft recommendation is printed in full below. Copies of Professor Morgan's report are available from the Office of the Chairman of the Administrative conference.

The Administrative Conference of the United States is an independent Federal Agency, established to promote improvements in the efficiency, adequacy and fairness of governmental processes (5 U.S.C. 571—576). In 1987, the Conference established the Special Committee on Ethics in Government to examine issues relating to the interplay between the government ethics laws and administrative agency operations. The committee has taken up several issues including standards of conduct for presidential transition workers (*see* Recommendation 88–1, 53 F.R. 26026–27) and deferred taxation for conflict-of-interest divestitures (*see* Recommendation 88–4, F.R. 26026–30). It currently is examining conflict-of-interest rules for Federal advisory committees and public financial disclosure for executive branch officials, which is the subject of the draft recommendation set forth below. While the Conference's committee was considering this topic, the President established the Commission on Federal Ethics Laws Reform which recently issued its report, *To Serve With Honor: Report of the President's Commission on Federal Ethics Law Reform (March 1989).* It is noted that while the Conference's committee has considered the recommendations of the President's Commission on Federal Ethics Law Reform on this subject, the draft recommendation takes a somewhat different approach to the issues.

Draft Recommendation: Public Financial Disclosure by Executive Branch Officials

Public financial disclosure by Federal officials is intended to make it possible to monitor actual or potential conflicts of interest of such officials. This, in turn, may deter public officials from even considering conduct that would present the appearance of a conflict of interest. However, these benefits of public financial disclosure must be balanced against the burdens imposed on the federal officials who are subject to them.

Determining appropriate public financial disclosure requirements requires an assessment and accommodation of three concerns: the relevance of the information to conflicts of interest which might be faced by the individual in his or her official capacity; the practical burden faced by an individual who must assemble and report information accurately (including whether a nomineee or employee would reasonably be expected to have at hand the information which he or she is required to report); and the psychological burden imposed on an individual who must make his or her financial status publicly available to others (*i.e.*, whether public disclosure constitutes an excessive invasion of privacy).

The Administrative Conference has studied the Ethics in Government Act's executive branch financial disclosure requirements (codified at 5 U.S.C. 201–209) and in this recommendation urges Congress to make specific changes those requirements, consistent with an appropriate balance of the benefits and costs of such disclosure.

This recommendation is not made with the intention of generally requiring either more or less disclosure of public officials. Rather, the conferences goal is to rationalize the Ethics in Government Act's requirements and eliminate those that appear to bear no reasonable relationship to the Act's purposes. On the one hand, the recommendation increases disclosure by reducing the current threshold level for the reporting of a covered individual's liabilities from $10,000 to $1,000, to be consistent with the current threshold level of $1,000 for the reporting of assets (¶ 2 b (1)). On the other hand, the recommendation would lessen disclosure by reducing the number of categories of value for the reporting of assets from the current six to two, which the Conference believes is sufficient for conflict-of-interest analysis and the maintenance of public confidence in the integrity of executive branch officials (¶ 2 b (2)).

Because the Act's executive branch financial disclosure provisions are so detailed, this recommendation has been organized to clearly distinguish between current provisions that the Conference believes generally further the Act's purposes and, therefore, should be retained, and those provisions that appear unnecessary to achieve the Act's purposes and, therefore, should be eliminated or changed. However, in recommending the retention of particular provisions, the Conference does not mean to imply that such provisions cannot be improved. To the contrary, the Conference urges the Congress to systematically review the coverage and language of all of the Act's public financial disclosure provisions, and to rewrite those that can be made clearer and simpler.

To illustate, the Conference recommends continuation of the current requirement that nominees for positions covered by the Act report the source of

all earned income in excess of $5,000 received by a reporting individual from one source in the two years preceding the year of filing (¶ 2 a (2)). However, the current statutory provisions (5 U.S.C. 202 (a)(6)(B)) requires reporting of such compensation paid "in any of the two calendar years prior to the calendar year during which the individual files his first report * * *." If strictly applied, a nominee who filed a report in October of 1989 would be required to disclose such compensation for calendar years 1987 and 1988, but not for the period in 1989 prior to his or her entering government service. This theoretical gap in coverage should be closed whether or not in practice it has proven to be a problem.

The same statutory provision exempts from the "over-$5,000 from one source" disclosure requirement the reporting of "any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was *directly involved* in the provision of such services." 5 U.S.C. 202 (a)(6)(B)(emphasis added). In redrafting this provision, Congress should consider either defining the term "directly involved" or delegating to the Office of Government Ethics the responsibility to clarify its meaning by regulation, especially as applied to individuals who provide services to others, such as lawyers. Therefore, although the Conference supports the retention of the substance of this and other of the Act's financial reporting provisions, it is clear that improvements to the language and coverage can be made.

Because of its limited mandate,[1] the Conference takes no position on the public financial disclosure requirements applicable to legislative and judicial branch officials. However, the similarity of those requirements to executive branch requirements suggests the desirability of reviewing and possibly amending legislative and judicial branch requirements as well.

Recommendation

1. Persons Required to File.

a. Positions For Which Coverage Should Be Retained. Congress should continue to require the following categories of executive branch personnel to make public financial disclosure:

(1) The President, Vice President, and nominees for and incumbents in positions which require Senate confirmation;

(2) Full-time officers and employees of the executive branch (including independent agencies) whose positions are classified as GS–16 or above or who are paid at or above the minimum rate of pay fixed for GS–16;

(3) Each member of a uniformed service whose pay grade is at or in excess of O–7;

(4) The Postmaster General, Deputy Postmaster General, each Governor of the United States Postal Service, and each Postal Service and Postal Rate Commission officer or employee whose rate of pay equals or exceeds the minimum rate of basic pay for GS–16;

(5) Each administrative law judge appointed pursuant to 5 U.S.C. 3105; and

(6) All other employees determined by the Director of the Office of Government Ethics to be in positions equal in responsibility in those normally classified at GS–16 or above.

b. Positions For Which Coverage Should Be Removed. Congress should amend the Ethics in Government Act to remove the reporting requirement, except as may be required under subsection c below, from the following persons:

(1) Candidates for the offices of President and Vice President who are not government officials otherwise required to report;

(2) Special government employees; and

(3) Designated agency ethics officers whose rate of pay or other responsibilities would not otherwise subject them to the reporting requirement.

c. Administrative Extensions of Coverage. Congress should amend the Ethics in Government Act to permit the Director of the Office of Government Ethics to extend the reporting requirement, on a position or categorical basis, to any officer, employee or special government employee of the executive branch not covered by the Act, whose position is determined by the Director to present an unusual opportunity for conflicts of interest.

d. Administrative Exemption From Coverage. Congress should amend the Ethics in Government Act to permit the Director of the Office of Government Ethics to exempt from the reporting requirement those positions included in subsection a above whose responsibilities are identified by their agencies and determined by the Director to be unlikely to place their incumbents in situations of conflict of interest.

e. Review of Coverage Extensions and Exemptions. Congress should require the Office of Government Ethics annually to review, based on the recommendation of the designated agency ethics officials, all determinations currently in effect under c and d above.

2. Information Required to be Filed

a. Reporting Requirements That Should Be Retained. Congress should leave the Ethics in Government Act unchanged in the following respects:

(1) *Reporting by Both Incumbent and Nominated Officials.* Congress should continue to require both *incumbent* executive branch officers and employees whose positions are covered by the Ethics in Government Act, and *nominees* for those positions, to disclose publicly the following categories of information:

(a) The identity of any interest in a trade or business or asset held for investment or production of income, if the value of the interest exceeds $1,000;

(b) The identity of all positions held by the reporting individual as an officer, director, trustee, partner, proprietor, representative, employee or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States, but not including positions held in religious, social, fraternal, or political entities, or positions solely of an honorary nature; and

(c) The date, parties to, and terms of any future employment arrangements negotiated by the reporting individual, leaves of absence during the period of federal service, continuing payments from a former employer, or continuing participation in a former employer's welfare or benefit plan.

(2) *Reporting Only by Nominated Officials.* In addition to the information required to be reported by incumbent and nominated executive branch officers and employees under subsection (1) above, Congress should continue to require that *nominees* for positions covered by the Ethics in Government Act report the source of all earned income in excess of $5,000 received by the reporting individual from one source in the two years preceding the one in which the nominee files, and a brief description of the services for which the compensation was paid. As current law provides, this requirement should not apply to information about any person for whom services were provided by the firm or association of which the nominee was a member, partner, or employee, unless the nominee was

[1] The Conference is authorized by statute to study and make recommendations relating to administrative procedure used by administrative agencies in carrying out administrative programs, 5 U.S.C. 574.

directly involved in the provision of such services.

(3) Reporting Only by Incumbent Officials. In addition to the information required to be reported by incumbent and nominated executive branch officers and employees under subsection (1) above, Congress should continue to require covered incumbent executive branch officers and employees to disclose the following categories of information: [2]

(a) The source, type and amount of non-governmental earned income received by the reporting individual, including honoraria, which in the aggregate exceeded $100; and

(b) The date and a brief description of each purchase, sale or exchange of real property, stocks, bonds, commodities futures or other property with a value over $1,000, *except* (i) transactions between the reporting individual and a spouse or dependant children, (ii) transactions involving a personal residence of the reporting individual or the individual's spouse, and (iii) transactions involving an investment in the nature of a cash equivalent (*e.g.*, a money market fund, certificate of deposit, or personal bank account.)

(4) Interests of Spouses and Dependent Children. The present statutory provisions on reporting of the interests of spouses and dependent children of the reporting official should be retained.

b. Reporting Requirements That Should be Changed. Congress should amend the Ethics in Government Act to change the reporting requirements in the following ways:

(1) Liabilities. The present requirement of reporting the identity of liabilities in excess of $10,000 owed by the reporting individual should be changed to a requirement of reporting liabilities in excess of $1,000, the same value which the statute now uses for reporting of assets. As present law provides, the reporting requirement should not extend to the individual's home mortgage, loans for the purchase of personal property which are secured by the property purchased and which do not exceed the value of the security, sums owed to a relative, and revolving charge accounts with a balance less than a specified amount at the end of the reporting period (currently $10,000.)

(2) Categories of Value. The present requirement that assets, liabilities, and transactions in assets above the $1,000 threshold be reported in numerous categories of value should be eliminated. However, in order to distinguish large interests from those of lesser significance, the reporting individual should be required to state whether each particular asset, liability or transaction was in excess of a specified higher amount (*e.g.*, $50,000 or $100,000 each).

(3) Sources of Earned Income Prior to Government Service. The requirement that all nominees for covered positions report the source, type and amount of non-government earned income which they received in the year prior to entering government service should be eliminated, except for amounts in excess of $5,000 received from one source (see 2 a (2) above).

(4) Income from Assets Otherwise Reported. The requirement that both incumbents and nominated officials report income in excess of $100 from each of their investments should be eliminated because the assets themselves are already reported.

(5) Reimbursements and Gifts.

(i) Reporting Period. The date after which all covered reimbursements and gifts should be required to be reported should be the date on which the official is nominated for or appointed to the position covered by the Ethics in Government Act, not the date the official takes office.

(ii) Reimbursement and Gifts of Travel or Entertainment. The threshold amount for reporting reimbursements and gifts of transportation, lodging, food or entertainment, other than personal hospitality from an individual, received by the reporting individual from any source other than a relative during the reporting period should be changed from $250 per year to $250 per event to avoid reporting de minimis information. The statute should be amended further to require, in addition to the source and a brief description, the reporting of the value or amount of such reimbursements or gifts in broad categories (*e.g.*, under $1,000; $1,000 to $10,000; over $10,000) in accordance with regulations issued by the Office of Government Ethics.

(iii) All Other Covered Gifts. The requirement of reporting all gifts to the reporting individual, other than gifts of transportation, lodging, food or entertainment, which aggregated more than $100 in value over the reporting period, excluding gifts from relatives of the reporting individual, and not aggregating gifts of $35 or less in calculating the $100, should be retained. However, the statute should be amended to require, in addition to the source and a brief description, the reporting of the value or amount of such gifts in broad categories (*e.g.*, under $1,000; $1,000 to $10,000; over $10,000) in accordance with regulations issued by the Office of Government Ethics.

Dated: March 24, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89-7474 Filed 3-28-89; 8:45 am]

BILLING CODE 6110-01-M

[2] It is noted that under current practice individuals who joined the government in the preceding calendar year are only required to report this information for their period of government service and not before.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[FV-89-026PR]

Walnuts Grown in California; Increase in Expenses

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would increase expenditures under Marketing Order No. 984 for the 1987-88 marketing year and for the 1988-89 marketing year established under the walnut marketing order. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by April 10, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal, comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is issued under marketing agreement and Order No. 984 (7 CFR Part 984), both as amended, regulating the handling of walnuts grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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 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 60 handlers of walnuts grown in California subject to regulation under the walnut marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of walnut producers and handlers may be classified as small entities.

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

The Board met on February 10, 1989, and unanimously recommended increasing expenses for the 1987–88 marketing year by $39,146, bringing the total budget from $1,280,936 to $1,320,082. The reasons for the increase in expenses is approval of an additional research program and a change in the Board's method of depreciating equipment purchases. During September of 1987, the Board was planning to fund an acreage survey which would aid the walnut industry in estimating the walnut crop more accurately. The budget was not increased at that time because the details of the survey as well as the proposed cost were not complete. Once the details were completed, both the Research Subcommittee and the Board approved the survey but the budget was not subsequently increased. In addition, the Board altered their method of depreciating equipment purchases during November 1987, after the budget was approved, from a 10-year depreciation schedule to expending the purchases 100 percent in the year purchased. This resulted in a line-item over-expenditure of $27,093. These two over-expenditures account for the total over-expenditure of $39,146. It will not be necessary to increase the assessment rate for the 1987–88 marketing year as adequate reserve funds are available to cover the increase.

The Board also recommended on February 10, 1989, with one dissenting vote, to increase the expenses for the 1988–89 marketing year by $75,000, bringing the total budget from $1,400,294 to $1,475,294. The reason for this expense increase is that the walnut industry would like to conduct an additional marketing research project. The purpose of the research would be to study the reasons for a decline in domestic walnut shipments and to develop new methods of increasing domestic shipments. This marketing research program accounts for the increase in expenses by $75,000. It will not be necessary to increase the assessment rate for the 1988–89 marketing year because adequate reserve funds are available to cover the expense.

There are no additional costs on handlers as a result of this proposed action. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The approval for the expense increase for the 1988–89 marketing year needs to be expedited, as the Board would like to proceed with the project. Because of the need to expedite this approval, it is found and determined that a comment period of less than 30 days is appropriate.

List of Subjects in 7 CFR Part 984.

California, Marketing agreements and orders, and Walnuts.

For the reasons set forth in the preamble, §§ 984.339 and 984.340 are proposed to be amended as follows:

PART 984—[AMENDED]

1. The authority citation for 7 CFR Part 984 continues to read as follows:

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

§ 984.339 [Amended]

Section 984.339 is amended by changing "$1,280,936 to $1,320,082."

984.340 [Amended]

3. Section 984.340 is amended by changing "$1,400,294 to $1,475,294."

Dated: March 23, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–7392 Filed 3–28–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 943

Public Hearings on the Proposed Designation of the Flower Garden Banks National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Public Hearings.

SUMMARY: In accordance with the Marine Protection, Research, and Sanctuaries Act, Pub. L. 92–532, as amended, NOAA announces public hearings to receive the views of interested parties on the draft environmental impact statement/management plan (DEIS/MP) for the proposed designation of a national marine sanctuary at the Flower Garden Banks in the northwestern Gulf of Mexico.

DATE AND TIME: Thursday, March 30, 1989, 10:00 a.m. to 1:00 p.m., and 6:30 p.m. to 9:00 p.m.

ADDRESS: Houston Museum of Natural Science, Brown Auditorium, One Hermann Circle Drive, Houston, Texas 77030. (The Museum is located at the north end of Hermann Park across from the Miller Outdoor Theatre.)

FOR FURTHER INFORMATION CONTACT: Rafael V. Lopez, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., #714, Washington, DC 20235 (202/673–5122).

SUPPLEMENTARY INFORMATION: The proposed designation document and regulations, and a summary of the draft management plan for the sanctuary, were published in the **Federal Register** on February 24, 1989 (54 FR 7953). On the same date, a notice of the

availability of the DEIS/MP also appeared in the **Federal Register** (54 FR 7984). Copies of the DEIS/MP are available on request from the Marine and Estuarine Management Division/NOAA. Written comments on the DEIS/MP must be received by April 25, 1989. These comments, as well as those made at the public hearings, will be considered in the preparation of the final environmental impact statement/management plan.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Date: March 24, 1989.

[FR Doc. 89-7436 Filed 3-28-89; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

Federal-State Unemployment Compensation Program; Income and Eligibility Verification System

AGENCY: Employment and Training Administration, Labor.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: The Department of Labor is hereby withdrawing the amendments proposed (Vol. 53, No. 171 FR 34120, September 2, 1988) to the Income and Eligibility Verification System regulations at 20 CFR Part 603. Their purpose was to provide the Federal Parent Locator Service within the United States Department of Health and Human Services access to State unemployment insurance information related to child support enforcement. However, the need for these amendments was eliminated by the enactment on October 13, 1988, of section 124 of the Family Support Act of 1988 (Pub. L. 100-485). As required by the Family Support Act of 1988, the Departments of Labor and Health and Human Services (DHHS) have signed a memorandum of understanding (MOU) to provide for disclosure of unemployment insurance wage and claim information to DHHS for purposes of carrying out the child support enforcement programs. The MOU establishes the method and format for disclosing information to DHHS; therefore, it is unnecessary to proceed with the amendments to 20 CFR Part 603.

FOR FURTHER INFORMATION CONTACT: Barbara Ann Farmer (202) 535-0610.

Signed at Washington, DC on March 15, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-7004 Filed 3-28-89; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-159-86]

Permitted Disparity With Respect to Benefits and Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed Rule; notice of public hearing.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the permitted disparity in employer contributions to, and employer-derived benefits under, qualified plans. These amendments are proposed to conform the regulations to section 1111 (a) and (b) of the Tax Reform Act of 1986 (Pub. L. 99-514) (100 Stat. 2085, 2435).

DATES: The public hearing will be held on Thursday, June 29, 1989 beginning at 10:00 a.m., and continuing , if necessary, at the same time on Friday, June 30, 1989. Requests to speak and outlines of oral comments must be delivered on or mailed by Thursday, June 15, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE-159-86), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jackie Burgess, telephone (202) 566-3935 (not a toll free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the Federal Register for Tuesday, November 15, 1988 (53 FR 45917).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than June 15, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers.

Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

T. Wayne Thomas,

Chief, Technical Services Staff Assistant Chief Counsel (Corporate)

[FR Doc. 89-7461 Filed 3-28-89; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[PS-229-84]

Treatment of Partnership Liabilities; Allocations Attributable to Nonrecourse Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for submitting comments and requests for a public hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing with respect to proposed and temporary regulations that were published in the **Federal Register** for Friday, December 30, 1988 (53 FR 53174, 53140). These regulations relate to the treatment of partnership liabilities and the allocation of deductions attributable to nonrecourse debt. The regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The extended deadline is June 28, 1989.

DATE: Written comments and requests for a public hearing must be delivered or mailed by June 28, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS-229-84), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mary Munday, 202–377–9470 (not a toll-free number).

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking cross-reference temporary regulations published in the Federal Register for Friday, December 30, 1988 (54 FR 53174, 53140), comments and requests for a public hearing with respect to the proposed rules were to be mailed or delivered by March 30, 1989. The date by which comments and requests for a public hearing are to be delivered or mailed is hereby extended to June 28, 1989.

Paul F. Kugler,

Associate Chief Counsel, Passthroughts and Special Industries.

[FR Doc. 89–7462 Filed 3–28–89; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–041; FRL–3544–9]

Approval and Promulgation of Implementation Plans, Tennessee; Stack Height Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by Tennessee that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Tennessee has satisfied its obligations under Section 406 of Public Law 95–95 to review its SIP with respect to EPA's revised stack height regulations.

DATE: Comments must be received on or before April 28, 1989.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Public Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219–5403.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 s. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95–95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 m in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Tennessee has indicated that the documentation is available for review at the State office (listed above). A summary of the States' findings is provided below.

Tennessee identified forty-six (46) sources examined in the stack height review analysis. Of those sources greater than 65 meters, thirty-three were grandfathered. Three sources were exempt by cooling towers or emergency flares. The remaining nine sources were reviewed for GEP. Only two sources had actual stack heights greater than GEP. These sources were evaluated through dispersion modeling to determine if the ambient standards are protected when the GEP stack height is used. The modeling techniques used in the demonstration supporting this revision are, for the most part based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models" (1978). Since that time, revisions to modeling guidance have been promulgated by EPA (51 FR 32176, September 9, 1986; 53 FR 392, January 6, 1988). Because the modeling analysis was underway prior to publication of the revised guidance, EPA accepts the analysis. On September 28, 1979, in a consent decree with EPA, the Commonwealth of Kentucky and various public interest groups (Tennessee Thoracic Society, et. al., Civil Action No. 77–3286–NA–CV, United States District Court for the Middle District of Tennessee, Nashville Division), TVA agreed to comply with an SO_2 limit of 3.4 lbs/MMBTU of heat input for their New Johnsonville plant. This SO_2 emission limit was based on a tentative evaluation at GEP stack height that it would protect the National Ambient Air Quality Standards. Tennessee has indicated that the documentation is available for review at the State Office (listed above).

Twenty-four sources were reviewed for other prohibited dispersion techniques. No sources were found that used a prohibited dispersion technique.

EPA is not acting on eight sources (identified Technical Support Document) because they currently receive credit

under one of the provisions remanded to the EPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir 1988). Tennessee and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the *NRDC* remand.

EPA Review

EPA has reviewed Tennessee's submittal and concurs with the State's conclusion that no revisions to Tennessee's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. Tennessee has therefore met its obligations under section 406 of Pub. L. 95–95 for existing source emission limitations.

Today's action does not certify that Tennessee has complied with the regulations contained in 40 CFR 51.164 and 51.118. Those federal provisions contain the stack height requirements for all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA is acting on Tennessee's submittal to comply with these requirements in a separate **Federal Register** notice. The technical support submitted by the State, and a Technical Support Document detailing EPA's review of the State's submittal, are available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this notice. By publishing this proposed approval of the submittal and soliciting public comment, EPA is ensuring the opportunity for public participation in the rulemaking process.

Proposed Action

EPA is proposing to approve the declarations by Tennessee that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air Pollution Control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: June 25, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator

Note: This document was received by the Office of the Federal Register March 24, 1989.

[FR Doc. 89–7425 Filed 3–28–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3546–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: On April 19, 1988 (53 FR 12896), the USEPA published a Notice of Final Rulemaking (NFR) approving Indiana's State Implementation Plan (SIP) for lead, which included the Hammond Lead Products, Incorporated, Lead Plant in Hammond, Indiana. USEPA's approval was based on the stipulation that Indiana and Hammond Lead further investigate fugitive emissions; and, if necessary, develop and submit to USEPA a revised control strategy for these emissions.

In order to comply with this requirement, on January 18, 1989, the State submitted a preliminarily adopted revision to 326 IAC 15–1–2 for Hammond Lead's Lead Plant, along with dispersion modeling. The revised rule requires additional control measures and revised emission limitations.

USEPA has reviewed the State's submission and has determined that it provides for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead, as expeditiously as practicable. USEPA, therefore, proposes approval of the submission as a revision to the Indiana lead SIP.

DATE: Comments on this proposed revision and on USEPA's proposed action must be received by (April 28, 1989).

ADDRESSES: Copies of the proposed SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 353–3849, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, IL 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, IN 46206–6015

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner (312) 353–3849.

SUPPLEMENTARY INFORMATION: On April 19, 1988 (53 FR 12896), USEPA approved most of Indiana's SIP for lead, including 325 IAC 15–1, which contained a plan for Hammond Lead's Lead Plant.[1] This plan contained the stipulation that Indiana and Hammond Lead would further investigate fugitive emissions at the Lead Plant; and, if necessary, develop and submit to USEPA a revised control strategy for these sources.

In response to this requirement, on June 9, 1987, Hammond Lead committed to Indiana to perform certain analyses and make certain changes in its facility. Indiana reviewed the changes needed, and incorporated them into a revised regulation, 326 IAC 15–1–2(6), which it submitted to USEPA for "parallel processing" on January 18, 1989, along with dispersion modeling.

The revised rule reads as follows:

Source	Facility Description	Emission Limitation lbs./hr.
(6) Hammond Lead Products, Inc., HLP—Lead Plant.	Stack No. (1–S–54)	0.09
	Stack No. (4A–S–8)	0.09
	Stack No. (14–S–16)	0.09
	Stack No. (1–S–2)	0.09
	Stack No. (1–S–26)	0.09
	Stack No. (16–S–56)	0.13
	Stack No. (1–S–52)	0.18
	Stack No. (1–S–27)	0.09
	Stack No. (4–S–35)	0.09
	Stack No. (6–S–33)	0.09
	Stack No. (4B–S–34)	0.09
	Stack No. (6–S–47)	0.05
	Ventilator Control System—North Building (Stack Nos. N–V–1, N–V–2, N–V–3, N–V–4, and N–V–5)—South Building (Stack Nos. S–V–1	0.002 each

[1] Indiana subsequently recodified 325 IAC 15–1 to 326 IAC 15–1. USEPA approved the recodification of this rule on October 3, 1988 (53 FR 38719). Therefore, USEPA will use Title 326 for all further references in today's proposal to this rule.

The Hammond Lead—Lead Plant was referred to as the Halox Division in earlier rulemaking notices. The State of Indiana has recently informed USEPA that the correct name for the source subject to this rulemaking is the Lead Plant.

Source	Facility Description	Emission Limitation lbs./hr.
	S-V-2, S-V-3, S-V-4, and S-V-5)—Vent 11.	0.006

(A) Compliance with the above emission limitations shall be achieved upon the effective date of this rule except for the limitations for Stack No. 1–S–52 and the Ventilator Control Systems.

(B) Hammond Lead Products shall submit a plan and schedule by June 30, 1989, for installation of the Ventilator Control Systems. The plans shall include the engineering design for each Ventilator Control System and shall identify the necessary steps to accomplish each phase of the Ventilator Control System Construction. The schedule for installation of each Ventilator Control System shall be as expeditious as practicable and shall provide the final installation for all Ventilator Control Systems shall be achieved no later than July 31, 1990. Each Ventilator Control System shall consist of a fan with a constant flow rate that draws air from the building through a (High Efficiency Particulate Air) HEPA filter which vents to the atmosphere through a stack. The HEPA filters shall be maintained and operated in order to achieve maximum control efficiency. In addition to the requirements contained in subsection (c) of this section, Hammond Lead Products shall submit an operation and maintenance plan by July 31, 1990, which incorporates good housekeeping practices for the Ventilator Control Systems. This operation and maintenance plan shall be incorporated into the operating permits for Hammond Lead Products and submitted to USEPA as a revision to Indiana's lead State Implementation Plan by December 31, 1990. The Ventilator Control Systems shall be designed such that process fugitive emissions will not routinely escape the buildings except as vented through the Ventilator Control Systems. The compliance test method specified in section 4(a) of this rule shall be used to determine compliance with the emission limitations for the Ventilator Control System stacks.

(C) The emission limitation in this subdivision for the Stack No. 1–S–52 shall be achieved by December 31, 1989. Until December 31, 1989, lead emissions from processes vented through the existing Main Dracco (Stack No. 1–S–1) shall not exceed 0.56 pounds per hours.

(D) By December 31, 1989, the stack heights for all processes except Stack No. 16–S–56, Stack No. 1–S–52 and the Ventilator Control Systems shall be no less than 60 feet above grade; the stack heights for Stack No. 16–S–56 and Stack No. 1–S–52 shall be no less than 82 feet above grade; and the stack height for Vent II shall be no less than 35 feet above grade. By July 31, 1990, the stack heights for the other Ventilator Control Systems shall be no less than 60 feet above grade.

(E) By July 31, 1990, Hammond Lead shall submit to the department a schedule for installation of HEPA filters at:

Stack No. 1–S–54
Stack No. 4A–S–8
Stack No. 14–S–16
Stack No. 1–S–2
Stack No. 1–S–26
Stack No. 16–S–56
Stack No. 1–S–52
Stack No. 1–S–27
Stack No. 4–S–35
Stack No. 6–S–33
Stack No. 4B–S–34
Stack No. 6–S–47

and a revised set of emission limitations for each stack identified in this clause. The schedule shall specify a date for installation of each HEPA filter such that installatiion at four stacks is complete by December 31, 1990; installation at eight stacks is complete by December 31, 1991; and installation for all stacks is complete by December 31, 1992. The revised emission limitation for each process shall process, unless accompanied by a demonstration using procedures acceptable to the commissioner that the lead air quality standard will be attained and maintained. If any one revised emission limitation exceeds the limitation specified in this subdivision, the revised limitation will be submitted to USEPA as a revision to the lead State Implementation Plan. The sum of all the revised emission limitations shall not exceed 0.912 pounds per hour. Compliance with the revised set of emission limitations shall be achieved by December 31, 1992.

USEPA Evaluation

The preliminarily adopted rule revises existing emission limitations and establishes new emission limitations for previously unregulated process fugitive emissions. The State of Indiana submitted air quality modeling to support these new and revised limits. In addition, the revised rule requires Hammond Lead to suggest further revised emission limitations for each stack identified in the rule to reflect the effectiveness of the HEPA filters installed on each control device. Compliance with the revised limits will reduce Hammond Lead's emissions beyond the level needed to demonstrate attainment and maintenance of the lead NAAQS.

In addition to the emission limitations, the rule contains requirements for the design by June 30, 1989, and installation by July 31, 1990, of ventilator control systems; each consisting of a fan that draws air from the building through a HEPA filter which vents to the atmosphere. Hammond Lead is also required to install HEPA filters on each control device of each stack by December 31, 1992.

This combination of emission limitations and control equipment requirements should go beyond the emission reductions needed for attainment of the lead standard and will provide for maintenance of the standards.

Compliance Methods

The revised rule specifies that compliance with the emission limitations must be determined by using the procedures outlined in 40 CFR 60, Appendix A, Method 12. This is an appropriate test method.

The State has also required that an operation and maintenance plan be developed by Hammond Lead to ensure that all fugitive emissions are vented to the Ventilator Control Systems (VCS). Indiana is required to submit it as a revision to the lead SIP, and, if USEPA then approves this plan, it will be Federally enforceable. Hammond Lead must meet both the emission limitations and the operations and maintenance requirements in order to be in compliance with the rule.

Compliance Date

The revised rule requires final compliance by July 31, 1990, the date of installation of all ventilator control systems. This constitutes a 7-month extension to the final compliance date beyond that specified in SIP rule 236 IAC 15–1–2(a)(6)(D), as approved by USEPA on April 19, 1988, and October 3, 1988.

According to the State, this additional time is necessary due to the uncertainties and limitations of incorporating an innovative control technology into an existing plant. In particular, the State identified the following difficulties in achieving compliance by December 31, 1989:

(1) Structural problems are anticipated in designing 11 control systems to be installed in a 60-year-old building with severe space

limitations. Installation will most certainly require reworking of the structural members and ceiling and may call for relocation of process equipment. Also, any redesign of the building must be accomplished in compliance with the local building codes.

(2) The nature of the control technology is such that the VCS must be individually designed to meet existing ventilation requirements. Ventilation of process fugitive emissions in the internal plant air requires controls which necessarily vary from one plant to another, according to building parameters, internal air flow, and the nature and quantity of the fugitive emission. However, in the case of the control technology chosen by Hammond Lead, it must additionally work with its consultant to design controls which incorporate HEPA filters in a configuration unique to particulate control at this type of operation (i.e., the Indiana Department of Environmental Management is unaware of any similar controls in current lead processing plants). Once operational, the VCS could prove to be state-of-the-art for this type of lead processing operation.

Due to these structural and design complications, the State has determined that a possible 7-month extension is reasonable. The rule requires Hammond Lead to submit a schedule upon completion of the engineering design work that calls for installation of the VCS as expeditiously as practicable, but no later than July 31, 1990. If the VCS can be installed sooner, Hammond Lead is required to do so.

As a result of the constraints, discussed above, and the fact that Hammond Lead will be required to submit a schedule for installation of the ventilation control system to the State of Indiana once design of the systems is complete, the time frame contained in the rule appears to be reasonable. Additional technical information is discussed in the Region V Technical Support Document.

Emission Inventory

The modeled inventory consisted of 23 point sources. The modeled emission rates equal the proposed allowed emission levels. The stack parameters were supplied by Hammond Lead.

Several observations should be made on the inventory:

(1) Only the Hammond Lead Lead Plant was included in the modeling. The impact from other sources, including the Hammond Lead Halstab plant, was accounted for in the background concentration. Based on previous modeling of other sources in the area (e.g., see USEPA's January 16, 1989, "Technical Support Document for the Indiana Lead SIP"), USEPA accepts the State's limiting of the modeling to the Lead Plant.

(2) The stack configuration and certain stack parameters have changed from those used by the State in its prior SIP work (i.e., reflected in USEPA's April 18, 1988, Notice of Final Rulemaking). These changes are based on more recent data and proposed stack mergings or raisings.

USEPA has reviewed the proposed stack configurations for consistency with its July 8, 1985 (50 FR 27892), stack height regulations,[2] which apply to stacks and sources which came into existence, and dispersion modeling techniques implemented, on or after December 31, 1970. Stack height credit for the purpose of establishing an emission limitation is generally restricted to Good Engineering Practice (GEP), i.e., the greater of 213 feet [65 meters (m)] or the GEP formula height (40 CFR 51.100 (ii)). Because the actual stack heights here do not exceed the *de minimis* height of 65m, the full stack height is creditable. (Note, the actual stack heights are less than GEP formula height. Thus, building downwash was accounted for in the modeling.)

As indicated, several sources are being merged. Although the merging includes the installation of pollution controls for lead emissions, it appears that the total allowable emissions are increasing (from 0.91 lbs/hour to 1.17 lbs/hour). These totals do not, however, include the process fugitive emissions from the ventilators which have since been factored in. The State of Indiana estimated that the current plantwide allowable emissions (0.91 lbs/hour plus actual ventilator emissions) actually exceed the proposed plantwide allowable emissions (1.196 lbs/hour). Thus, merged stack credit is acceptable pursuant to 40 CFR 51.100 (hh)(2)(ii)(B) [i.e., merged associated with the installation of pollution controls and the net reduction in emissions]. Additional information on this issue is discussed in the Technical Support Document.

Results of Modeling Analysis

The maximum predicted quarterly average concentration is 1.34 micrograms per cubic meter (ug/m³) of lead during 1986 (2nd quarter) at a receptor located just south of the plant. The total maximum concentration (i.e., including background) of 1.495 ug/m³ demonstrates attainment of the ambient lead standard (1.50 ug/m³).

Conclusion

USEPA has reviewed the proposed SIP revision for Hammond Lead Products-Lead Plant and has determined that it provides for attainment and maintenance of the NAAQS for lead as expeditiously as practicable. Therefore, USEPA proposes approval of the revised SIP.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Authority: 42 U.S.C. 7401–7642.

Dated: March 1, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–7423 Filed 3–28–89; 8:45 am]

BILLING CODE 6560-50-M

[2] Certain provisions of the Stack Height Rules were remanded to USEPA in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). These are: grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitting good engineering practice (GEP) formula height [40 CFR 51.100 (kk)(2)]; dispersion credit for sources originally designed and constructed with merged or multi-flue stacks [40 CFR 51.100 (hh)(22)(ii)(A)]; and grandfathering credit for sources unable to show reliance on the original 2.5 H formula [40 CFR 51.100 (ii)(2)]. None of these provisions applies to Hammond Lead.

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40 CFR Part 52

[FRL-3531-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a revision to the Ohio State Implementation Plan (SIP) for ozone. This revision is an alternative emission control plan (bubble) with weekly averaging for volatile organic compounds (VOC) involving the General Motors Corporation, Inland Division, Dayton (Inland) facility's six-motor mount parts coating lines and its Vadalia facility's four-seat pad molding lines. The two Inland facilities are located in Montgomery County, Ohio, and area designated as nonattainment for ozone.

USEPA today is proposing to disapprove this SIP revision because (1) there are not sufficient emission reduction credits from the Vandalia seat pad molding lines to offset the excess emissions from the Dayton motor mount coating lines; (2) Inland did not demonstrate either that the application of reasonable available technology (RACT) is infeasible on a daily basis or that daily VOC emissions cannot be

determined; and (3) the State did not demonstrate that the shift from daily to weekly VOC emissions averaging would not interfere with timely attainment and maintenance (and, in the interim, reasonable further progress (RFP) toward attainment) of the ozone national ambient air quality standard (NAAQS). Under USEPA's SIP revision policy, sources located in areas with approved SIPs, but which show measured violations of the NAAQS, cannot be considered for long-term averaging without such a RFP and attainment demonstration, because a revision allowing averaging for a period longer than a day will result in a potential increase in daily emissions. USEPA's proposed action was initiated by a request by the State to revise its SIP.

DATE: Comments on this revision and on the proposed USEPA action must be received by April 28, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Division, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Agency, 1800 WaterMark Drive, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On October 31, 1985, the Ohio Environmental Protection Agency (OEPA) submitted a proposed bubble with long-term averaging for VOC emissions between the Inland facility's six-motor mount parts coating lines and the Vandalia facility's four-seat pad molding lines. The proposed bubble variance includes the following emission limitations:

A. For the combined lines at the Dayton facility:

1. The weekly volume-weighted average VOC content of coatings used is not to exceed 8.82 lbs VOC/gal coating, excluding water.

2. The total daily VOC emissions shall not exceed 2,419 lbs.

3. The total annual VOC emissions shall not exceed 302.36 tons.

B. for the combined lines at the Vandalia facility:

1. The total daily VOC emissions from waxes applied to the top and bottom of mold cavities shall not exceed 8,448 lbs.

2. The total annual VOC emissions from waxes applied to the top and bottom of mold cavities shall not exceed 1,056 lbs.

3. The total VOC emission from waxes applied to mold lids shall not exceed 0 lbs.

On January 13, 1986, USEPA notified OEPA that the October 31, 1985, submittal was deficient (see USEPA's December 6, 1985, technical support document (TSD)). The OEPA submitted additional information on February 12, 1986, which did not correct the deficiencies cited in USEPA's December 6, 1985, TSD.

Current VOC SIP

Under the existing federally approved SIP, the Dayton motor mount part coating lines are subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U) for surface coating of miscellaneous metal parts and products. The OAC Rule 3745–21–09(U) limits the VOC content of extreme peformance coatings to 3.5 pounds of VOC per gallon of coating, minus water. For the motor mount coating line, this limit corresponds to allowable emissions of 15 tons VOC per year (based on 1982 production levels). The actual emissions, on the same basis, are 302.36 tons per year.

The Vandalia seat pad molding operation is not subject to Ohio's VOC RACT I or II regulations, but is subject to the control requirements in OAC Rule 3745–21–07(G) which limits emissions of organic material from a broader range of sources that use "photochemically reactive" material. OAC Rule 3745–21–01(C)(5) contains a definition of "photochemically reactive" material. Because the solvent used in the seat pad molding operations, Naphthol 66, is not included in this definition, this operation is considered to be in compliance with OAC Rule 3745–21–07(G). (Although OAC Rule 3745–21–01(C)(5) does not define Naphthol 66 as a "photochemically reactive" material, USEPA does consider it reactive.) USEPA approved these VOC rules on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097). In lieu of the requirements mentioned above, OEPA has submitted a bubble with weekly averaging for Inland as a revision to the Ohio SIP.

Deficiencies in the Bubble

USEPA's April 7, 1982, Emissions Trading Policy Statement (47 FR 15076), states that the only surplus emission reductions are credible. In order for emission reductions to be considered surplus in a nonattainment area with an approved Part D SIP, they cannot have been assumed as part of the area's demonstration of RFP and attainment. This prevents "double-counting" of reductions.

The 1979 Montgomery County ozone SIP lists Inland's Vandalia facility as having VOC emissions of 891 tons in 1977. The RACT-level emissions for 1982 and 1987 are listed as 851 tons and 1 ton (by switching to water-based mold release) per year, respectively.

The emissions reductions from the Vandalia plant that Inland claims are surplus have already been included in the 1979 ozone SIP for Montgomery County. The proposed 1,056 tons/year emission limit is higher than either the base year (1977) or control year (1982) emissions. Therefore, the bubble is not appropriate because there are not sufficient emission reduction credits from the Vandalia plant to offset the excess emissions from the Dayton motor mount coating lines.

Weekly Averaging of Emissions

OAC Rule 3745–21–09(B) requires compliance to be determined on a daily basis. The Inland revision, however, would permit compliance determinations on a weekly basis for all the coating lines.

Generally, USEPA guidance specifies the use of daily averaging of a source's VOC emissions as the preferred alternative where continuous compliance with the source's emission limit is infeasible. In USEPA's view, the use of daily averaging for source is generally necessary to assure timely attainment and maintenance of the short-term ozone NAAQS, and to prevent circumvention of the requirement for RACT-level controls. Under certain specific circumstances, however, USEPA will allow longer averaging periods of up to 30 days. USEPA's current policy concerning averaging times for VOC sources is set forth in a January 20, 1984, memorandum, subject: "Averaging Times for Compliance with VOC Emission Limits." The memorandum states that sources in areas lacking

approved SIPs or in areas with approved SIPs, but showing measured violations, cannot be considered for averaging periods longer than 24 hours, until the State demonstrates that long-term averaging will not interfere with timely attainment and maintenance of the NAAQS for ozone. This is required because a change from daily to weekly averaging will allow an increase in emissions on some days, and an area with measured violations may need to preserve the reduction produced by daily averaging limits to attain and maintain the standards. In addition, the State must demonstrate that RFP will be maintained in the area with respect to the maximum daily emissions allowed with long-term averaging.

Violations of the ozone standard were recorded in Montgomery County, based on 1986–1988 data and in Clark County (part of the Dayton demonstration area) in 1983 and in 1988. Violations occurred after the attainment date of December 31, 1982. In light of these exceedances, Ohio has not demonstrated that the higher daily emission that could result from weekly averaging would not make it more difficult for the area to attain and maintain the ozone standard as expeditiously as practicable (achieve RFP in the interim) at hose monitors. Absent such a showing, USEPA must conclude that the shift may result in an increase in daily emissions and thereby aggravate, rather than improve the area's current air quality. Therefore, USEPA is proposing to disapprove the SIP revision for Inland. This notice identifies major deficiencies, it should also ensure conformances with USEPA requirements specified in the following (Appendix D of the Post-1987 ozone policy, titled "Discrepancies and Inconsistencies found in current SIP's, (2) a May 25, 1988, clarification to Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," and (3) the "SIP Approvability Checklist—Enforceability," which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," before resubmitting the revision for approval by USEPA. These documents contain USEPA's requirements (largely dealing with SIP approvability, and enforceability) which must be met for a site-specific SIP revision to be approved.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before (30 days from publication) will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V Office address provided at the front of this notice.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. section 605(b), the Administrator has certified that disapproving this SIP request will not have a significant impact on a substantial number of small entities because it imposes no new requirements on anyone.

Authority: 42 U.S.C. 7401–7642.

Dated: February 27, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89–7424 Filed 3–28–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 272

[FRL–3545–9]

Ohio; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Ohio for final authorization, public hearing, and public comment period.

SUMMARY: The State of Ohio has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA) has reviewed Ohio's initial and revision applications and has made the tentative decision that Ohio's hazardous waste management program satisfies all of the requirements necessary to qualify for RCRA final authorization. Thus, EPA intends to grant final authorization to the State of Ohio to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Ohio's application for final authorization is available for public review and comment. A public hearing will be held to solicit comments on the application.

DATE: A public hearing is scheduled for April 28, 1989, at 2:00 p.m. in Room 3A, Ohio Environmental Protection Agency, 1800 WaterMark Drive, Columbus, Ohio. Ohio will participate in the public hearing held by EPA on this subject. All comments on this tentative determination and the Ohio final authorization application must be recieved by the close of business on April 28, 1989.

ADDRESSES: Copies of the Ohio final authorization application are available during the hours of 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Ohio Environmental Protection Agency, Division of Solid and Hazardous Waste Management, 1800 WaterMark Drive, Columbus, Ohio 43266–0149, Phone (614) 644–2934; U.S. EPA Region V, Regulatory Development Section, Office of RCRA, Waste Management Division, 230 South Dearborn Street, 13th Floor, Chicago, Illinois 60604, Phone (312) 886–4179; and U.S. EPA Headquarters, Library, PM 211A, 401 M Street, SW., Washington DC 20460, Phone (202) 382–5926. Written comments should be sent to Ms. Judy Greenberg, Regulatory Development Section (5HR–JCK–13), Office of RCRA, EPA Region 5, 230 South Dearborn Street, Chicago, Illinois 60604, Phone (312) 886–4179.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Greenberg, Regulatory Development Section (5HR–JCK–13), Office of RCRA, U.S. EPA Region 5, 230 South Dearborn Street, Chicago, Illinois 60604, Phone (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616) (HSWA). Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). EPA's implementing regulations at 40 CFR 271.121 through 271.137 established a phased approach to interim authorization: Phase I covered EPA regulations in 40 CFR Parts 260 through 263, and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities) and Phase II, covering EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers and tanks.

Phase IIB covers permitting of incinerator facilities, and Phase IIC addresses the permitting of landfills, surface impoundments, waste piles, and land treatment facilities. By statute, all interim authorizations expired on January 31, 1986. Responsibility for the hazardous waste program returned (reverted) to EPA on that date, if a State with interim authorization has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that a State's program: (1) Is "equivalent" to and no less "stringent" than Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement authority and public participation in the permitting process (section 3006(b); 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order the qualify for final authorization. EPA's regulations for final authorization appear at 40 CFR 271.1–271.23.

B. Ohio

Ohio was granted Phase I interim authorization on July 15, 1983, (48 FR 32345) on July 8, 1985, Ohio submitted an official application for final authorization. Prior to submission of the application to EPA, Ohio solicited public comment on the draft application. The State received no written comments, and no comments were presented at the public hearing. One verbal request was made during the public hearing for a copy of the State's application. Ohio received two telephone requests for copies of the State's application. The State staff responded to these requests.

On September 9, 1985, EPA transmitted to Ohio consolidated comments on the State's completed application for final authorization. On November 29, 1985, (50 FR 49072), EPA published a Notice of Delayed Determination on Ohio's Application for Final Authorization under RCRA in the **Federal Register**. This notice was published to provide additional time for the State to demonstrate its capability in administering the RCRA program. On January 31, 1986, (51 FR 4128) **Federal Register** notice was published, announcing the expiration of interim authorization as required by law, and identifying Ohio as being a State in which the authority to implement RCRA had reverted to EPA.

During the program reversion period and while Ohio's application has been pending, from January 1986 to the present, the State has continued to implement and enforce its own regulations and to perform inspections and other agreed-upon tasks under a Cooperative Agreement between the State and EPA. EPA has continued to assess the capability of the State program, and believes that the State is capable of administering a quality RCRA program. During September 1987, Region V and Ohio agreed that Ohio would demonstrate its capability to administer a quality program by: (1) Sustaining satisfactory performance under the Cooperative Agreement over four consecutive quarters, beginning with the first quarter of Federal Fiscal Year (FFY) 1988, and ending the fourth quarter of FFY 1988; and (2) submitting a supplement to the State's official application for final authorization in order to be capable of being authorized for numerous requirements according to the schedules for modifying the State program, appearing at 40 CFR 271.21(e).

Evaluations were conducted at the end of each quarter in FFY 1988. At each of these evaluations, the State demonstrated that it was successfully carrying out the objectives of the RCRA program in Ohio, pursuant to the Cooperative Agreement. Ohio submitted a draft supplemental application to EPA on September 22, 1988. Ohio provided the supplemental application for further public comment in accordance with 40 CFR 271.20(b), because authorities on which public comment was solicited in 1985 had been modified. Ohio also provided as part of its supplemental application a request for authorization for revisions according to 40 CFR 271.21(e), if authorization for the base program were granted. Ohio submitted its official supplemental application for final authorization on December 22, 1988. On February 8, 1989, EPA transmitted comments on the official supplemental application to the State. Ohio has satisfactorily addressed those comments.

EPA has reviewed Ohio's official application and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization for the Federal RCRA program in effect as of July 8, 1984, and for non-HSWA revision Clusters I, II, and III. Thus, EPA intends to grant final authorization to Ohio to operate its program as revised in lieu of the Federal RCRA program, subject to the limitations on its authority imposed by HSWA.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the EPA will hold a public hearing on its tentative decision on April 28, 1989, at 2:00 p.m., in Room 3A, Ohio Environmental Protection Agency, 1800 WaterMark Drive, Columbus, Ohio. Copies of Ohio's application are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

EPA will consider all significant public comments on its tentative determination received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision to grant or deny final authorization to Ohio. EPA expects to make a final decision on whether or not to approve Ohio's program as revised and will give notice of this decision in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments. Ohio is not seeking authority over any Indian lands.

C. Effect of HSWA on Ohio's Authorization

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), which amended RCRA, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Ohio if final RCRA authorization is granted. To the extent the authorized program is unaffected by HSWA, the State program would operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those portions of HSWA in Ohio until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for

those areas in which the State is not yet authorized. Once Ohio is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist EPA's implementation of HSWA under a Cooperative Agreement.

Today's tentative determination includes authorization of Ohio's program for a single requirement implementing HSWA, i.e. availability of information under section 3006(f) of RCRA. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect under State law; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice which explains in detail HSWA and its effect on authorized States. That notice was published at 40 FR 28702–28755, July 15, 1985.

D. Codification in Part 272

EPA has tentatively decided to codify its approval of State programs in Part 272 of Title 40, Code of Federal Regulations (CFR) and to incorporate by reference therein the State statutes and regulations that EPA will enforce under Section 3008 of RCRA. Today's proposed codification reflects the State program that will be in effect if EPA's tentative determination to grant final authorization under Section 3006(b) for Ohio's hazardous waste program as revised becomes final. This effort will provide clearer notice to the public of the scope of the authorized program in each State. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Pub. L. 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By codifying the authorized Ohio program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Ohio, the status of Federally approved requirements of the Ohio program will be readily discernible.

The Agency proposes to codify for enforcement purposes only those provisions of the Ohio hazardous waste management program for which authorization approval will be granted by EPA. If EPA finalizes its approval of Ohio's program but does not finalize approval of any of, or part of, the non-HSWA Clusters I, II, and III revisions to that program prior to finalizing this codification, the codification will reflect only those provisions of Ohio's program that will have been authorized.

Concerning HSWA, some State requirements may be analogous to HSWA requirements which are in effect under Federal statutory authority in that State. However, State requirements analogous to HSWA are not authorized until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce HSWA requirements and not the State analogues.

To codify Ohio's authorized hazardous waste program, EPA proposes to add specific requirements to Subpart KK to Part 272 of Title 40 of the CFR. Subpart KK has previously been reserved for Ohio. Proposed §§ 272.1800(a)(1) through (3) and 272.1800(b) through (d) codify for enforcement purposes the State statutes and regulations, the Memorandum of Agreement, the Attorney General's Statements, and the Program Descriptions which were submitted to EPA in Ohio's program application for approval of the State's hazardous waste management program under Subtitle C of RCRA.

The Agency retains the authority under section 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to enforcement action under section 3008, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedures Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to codify for purposes of enforcement such particular, authorized Ohio enforcement authorities. Proposed § 272.1800(a)(2) lists those authorized Ohio authorities that would fall into this cagegory. With respect to sections 3007, 3013, and 7003 of RCRA, the Agency will rely on Federal substantive authority as well as the above authorities.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in Part 272. Section 272.1800(a)(3) of the proposed codification simply lists for reference and clarity the Ohio statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program proposed for codification. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

As noted above, the Agency is not proposing to amend Part 272 to include HSWA requirements and prohibitions that are immediately effective in Ohio and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (See *FR* 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21(e), and then to seek authorization for those revisions pursuant to § 271.21(e). EPA expects that the States will be modifying their programs substantially and repeatedly. In general, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance with Executive Order 12291

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

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8-7.

Valdas V. Adamkus,

Regional Administrator.

Dated: March 6, 1989.

For the reasons set forth in the preamble, 40 CFR Part 272 is intended to be amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for Part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Convervation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart KK of Part 272 is proposed to be revised to read as follows:

Subpart KK—Ohio

Sec.
272.1800 State Authorization
272.1801 State-Administered Program: Final Authorization
272.1802 through 272.1849 [Reserved]

SUBPART KK—OHIO

§ 272.1800 State authorization.

(a) The State of Ohio is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA) (Pub. L. 98-616, Nov. 8, 1984), 42 U.S.C. 6926 (c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR Part 271. The State's program, as administered by the Ohio Environmental Protection Agency, was approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this chapter. EPA's approval was effective on [insert effective date]. (See [insert *FR* publication date of final rule].)

(b) Ohio is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a **Federal Register** notice granting Ohio authorization.

(c) Ohio has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under section 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Ohio must revise its approved program to adopt new changes to the Federal Subtitle C program, in accordance with section 3006(b) of RCRA and 40 CFR Part 271, Subpart A. Ohio must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(g). If Ohio obtains final authorization for the revised requirements pursuant to section 3006(b), the newly authorized provisions will be listed in § 272.1801 of this subpart. If Ohio in the future obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.1802.

§ 272.1801 State-administered program: Final authorization.

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b): Ohio has final authorization for the following elements submitted to EPA in Ohio's program application for final authorization and approved by EPA effective on [insert final rule publication date]

(a) State Statutes and Regulations.

(1) The following Ohio regulations are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Ohio Administrative Code, Volume 4, Chapter 3745, Sections: 50-01; 50-03; 50-10; 50-11; 50-31 through 50-32; 50-40 through 50-44(C)(3)(j); 50-44(C)(4) through 50-44(C)(4)(k); 50-44(C)(5) through 50-44(C)(5)(h); 50-44(C)(6) through 50-44(C)(7)(i); 50-44(C)(8) through 51-03(C)(2)(b)(i); 51-03(D) through 51-03(E); 51-04 through 51-05(D)(2); 51-05(E) through 51-05(F)(2); 51-05(G) through 51-05(I); 51-06(A)(1) through 51-06(A)(3)(g); 51-06(B) through 52-20(E); 52-20 Appendix I through 52-34(C)(2); 52-40 through 52-43; 52-50 through 53-10; 53-11(D) through 53-20(G); 53-21 through 55-99; 56-20 through 56-31; 56-50 through 56-59; 56-70 through 56-82; 57-01 through 57-14(B); 57-15 through 57-17; 57-40 through 58-40; 58-43 through 58-44; 58-45(C); 58-46(C); 58-60 through 65-01(C); 65-10 through 68-14(C); 68-15 through 68-51; 68-70 through 68-82; 69-01 through 69-30 (OAC June 30, 1988, as supplemented by 1988-1989 Ohio Monthly Record, pages 430-495 (November 1988), and amendments to hazardous waste rules effective February 23, 1989, on file with the Ohio Secretary of State). (Copies of the Ohio regulations that are incorporated by reference in this paragraph are available from Banks-Baldwin Law Publishing Company, P.O. Box 1974, University Center, Cleveland, Ohio 44106-8697, Customer Service Department.)

(2) The following statutory provisions and regulations concerning State enforcement, although not codified herein for enforcement purposes, are part of the authorized State program:

(i) Ohio Revised Code, Title 1, Chapter 119, Sections: 01 through 06.1, and 07 through 13; Ohio Revised Code, Title 1, Chapter 149, Sections 011, 43, and 44 (Page, 1987); Ohio Revised Code, Title 37, Chapter 3734, Sections: 01 through 05, 07, 09 through 14.1, 16 through 17, 20 through 22, and 31 through 99 (Page, 1987).

(ii) Ohio Administrative Code, Volume 4, Chapter 3745, Sections: 49-031, 50-21 through 50-30; and 51-03(F) (OAC June 30, 1988, as supplemented by 1988-1989 Ohio Monthly Record, pages 430-495 (November 1988), and amendments to hazardous waste rules effective February 23, 1989, on file with the Ohio Secretary of State).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not codified for enforcement purposes.

(i) Ohio Revised Code, Title 37, Chapter 3734, Sections: 06, 08, 18 through 19, and 23 through 30 (Page, 1987).

(ii) Ohio Administrative Code, Volume 4, Chapter 3745, Sections: 50-33 through 50-37, and 53-11(A) through 53-11(C) (OAC June 30, 1988).

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region V and the Ohio Environmental Protection Agency signed by the EPA Regional Administrator on March 6, 1989, is codified as part of the authorized hazardous waste

management program under Subtitle C of RCRA. 42 U.S.C. 6921 *et seq.*

(C) Statement of Legal Authority. (1) "Attorney General's Statement for Final Authorization," signed by the Attorney General of Ohio on July 1, 1985, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(2) Supplemental "Attorney General's Statements for Final Authorization," and addenda to such Statements signed by the Attorney General of Ohio on December 20, 1988, and February 24, 1989, are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(d) Program Description. The Program Description and any other materials submitted as part of the original application or as supplements thereto are codified as part of the authorized hazardous waste management program under Subtitle of RCRA, 42 U.S.C. 6921 *et seq.*

§§ 272.1802 through 272.1849 [Reserved]

[FR Doc. 89-7409 Filed 3-28-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 59
Wednesday, March 29, 1989

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-038]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
89-047-04	Monsanto Co	02-16-89	Genetically engineered tomato for lepidopteran insect resistance.	Illinois.
89-047-07	Calgene, Inc	02-16-89	Genetically engineered cotton for bromoxynil herbicide tolerance.	Mississippi.
89-053-01	Crop Genetics International Corp	02-22-89	Genetically engineered rice for lepidopteran insect resistance.	Maryland.

Done at Washington, DC, this 24th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-7414 Filed 3-28-89; 8:45 am]
BILLING CODE 3410-34-M

[Docket No. 89-043]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received and is reviewing the following applications to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
89-065-01	University of Kentucky	3-6-89	Genetically engineered tobacco plants for heavy metal resistance.	Kentucky.

Application No.	Applicant	Date received	Organism	Field test location
89-073-01	Monsanto Co.	See Below	Genetically engineered tomato plants for resistance to tobacco and tomato mosaic viruses.	Illinois.

We received the original permit application from Monsanto Company on February 16, 1989. However, the application was incomplete. Since that time, we have received additional information from the company which completes the application. Therefore, we are beginning the review period as of March 14, 1989.

Done at Washington, DC, this 24th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-7413 Filed 3-28-89; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

South Charleston Community Park RC&D Measure, Ohio; Environmental Impact Statement

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the South Charleston Community Park RC&D Measure, Scioto County, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment along the banks of Gilroy Ditch within the South Charleston Community Park, South Charleston, Ohio. Planned works of improvement include the installation of stone-filled gabion baskets along 900 feet of critically eroding ditch banks, and the seeding and mulching of the upper portion of the ditch bank.

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 Joseph C. Branco.

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

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Joseph C. Branco,

State Conservationist.

March 21, 1989.

[FR Doc. 89-7477 Filed 3-28-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00008." A summary of the application follows.

Summary of the Application

Applicant: FEXCORP, Inc. (FEXCORP), Highway 64 & I-95, Walterboro, South Carolina 29488, Contact: Tammie E. White, Attorney, Telephone: (404) 572-3384.

Application No.: 89-00008.

Date Deemed Submitted: March 13, 1989.

Members (in addition to applicant): Coosaw Chip Co., Inc., Coosawhatchie South Carolina; Dempsey Wood Products, Inc., Orangeburg, South Carolina; W.M. Sheppard Lumber Co., Inc., Brooklet, Georgia; and Thompson Hardwoods, Inc., Hazelhurst, Georgia.

Export Trade

Products

Wood chips, including residue wood chips and roundwood wood chips.

Export Trade Facilitation Services (as They Relate to the Export of Products)

Consulting; international market research; advertising; marketing; insurance; product research and design exclusively for export; legal assistance;

transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

FEXCORP and its Members seek certification to:

1. Bid on and enter into contracts for the sale of Products to buyers in Export Markets;

2. Solicit and obtain price quotations, and purchase Products, from Members and, as necessary, from other domestic Suppliers individually, for the purpose of exporting Products to buyers in Export Markets;

3. Set the price at which FEXCORP will supply Products to buyers in Export Markets, based upon price quotations and supply data received from Members and taking into account any mark-up to the composite price approved by FEXCORP;

4. Provide Export Trade Facilitation Services to Members and, individually, to other Suppliers;

5. Sell Products to persons or entities (including Members, Suppliers, or other buyers) in the United States, provided, however, that:

a. Such sales shall occur only in the event that a foreign purchaser defaults under the terms of the purchase agreement between FEXCORP and such foreign purchaser, and

b. The domestic customer purchases only the Products covered by the purchase agreement between FEXCORP and the foreign purchaser;

6. Restrict shareholders of FEXCORP from selling, assigning, transferring, pledging, or encumbering all or any part of their shares without giving FEXCORP notice of the proposed conveyance and the option to repurchase the shares; and

7. Exchange the following information:

a. Information relating to the quantities available for export, export prices, export sales, export orders, terms of marketing or sale in Export Markets, and strategies or methods of operation of FEXCORP or any Member in Export Markets;

b. Information about Export Markets, including selling strategies, prices, projected demand, and customary terms of sale in Export Markets;

c. Information on costs specific to exporting to Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage, handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing); and

d. Information (other than information regarding domestic costs, output, capacity, inventories, prices, sales, orders, terms of marketing and sales, and strategies and methods of operation in the United States) that is generally available to the trade or public.

Date: March 23, 1989.

Thomas H Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-7371 Filed 3-28-89; 8:45 am]

BILLING CODE 3510-DR-M

[A-588-054]

Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan, Preliminary Results of Antidumping Duty; Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by the petitioner and a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on tapered roller bearings four inches or less in outside diameter and certain components thereof from Japan. The review covers the manufacturers/exporters of this merchandise to the United States and generally the period from April 1, 1974 through July 31, 1980. The review indicates the existence of dumping margins for the two firms.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Sean Kelley or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 8976) the final results of its last administrative review of the antidumping finding on tapered roller bearings four inches or less in outside diameter and certain components thereof (41 FR 34974, August 18, 1976). The two companies covered by this review were not included in that notice of final results. The Timken Company, the petitioner, and Nippon Seiko KK., a respondent, requested in accordance with 19 CFR 353.53a(a) that we conduct an administrative review. We published a notice of initiation of the review on July 9, 1986 (51 FR 24883). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after the date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of tapered roller bearings ("TRBs") four inches of less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. During the review period such merchandise was classifiable under items 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS items 8482.20.00 and 8482.99.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, Nippon Seiko K.K. ("NSK") and Koyo Seiko ("Koyo"), of TRBs and the period April 1, 1974 through July 31, 1980, for NSK, and April 1, 1974 through March 31, 1979, for Koyo.

United States Price

NSK did not report U.S. sales for April and May 1974 or home market sales for June 1974 to June 1976. NSK submitted, in lieu of home market sales data, six

month schedules of the average sales price for eight bearings for two customers. These schedules were previously submitted to the Treasury Department. We requested, but did not receive, monthly sales data for all customers. Therefore, we used best information otherwise available for NSK for the April 1, 1974 to June 30, 1976 period. Best information otherwise available was the highest rate for a responding firm for this period.

We also used best information otherwise available for Koyo for the April 1, 1978 through March 31, 1979 period due to inconsistencies in the data. Specifically, at verification we determined that material costs were accurately reported but other cost of production items required adjustment and we requested a resubmission of the corrected information. When we compared the resubmission to the original data we found that the material costs of the two submissions were not consistent. Best information otherwise available was the highest rate for a responding firm for this period.

In calculating United States price the Department used exporter's sales price ("ESP"), as defined in section 772 of the Tariff Act. ESP was based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, ocean freight and insurance, export inspection fees, brokerage and handling, U.S. inland freight and U.S. duty, warehouse transfer freight expense, inventory carrying cost, U.S. credit, commissions, and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value ("FMV") the Department used home market price, as defined in section 773 of the Tariff Act, where sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparsion. Where we did not find a contemporaneous sale of such or similar merchandise in the home market, we used constructed value.

FMV was based on the packed, delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, credit, differences in physical characteristics of the merchandise, and packing. We made a further adjustment to FMV for indirect selling expenses to offset indirect selling expenses in the United States; a deduction up to the amount of the U.S. indirect expenses was allowed.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included cost of materials, labor, and factory overhead in our calculations. NSK's and Koyo's selling, general, and administrative (SG&A) expenses were greater than the statutory minimum of ten percent of the cost of manufacture so we used actual SG&A. For both NSK and Koyo we used the statutory minimum of eight percent for profit.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/ Exporter	Period	Margin (percent)
Nippon Seiko K.K.	04/01/74-06/30/76	16.44
	07/01/76-07/31/77	16.59
	08/01/77-07/31/78	19.04
	08/01/78-07/31/79	19.28
	08/01/79-07/31/80	7.77
Koyo Seiko	04/01/74-07/31/76	16.44
	08/01/76-03/31/78	22.86
	04/01/78-07/31/78	19.04
	08/01/78-03/31/79	19.28

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttal comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties shall be required for these firms. For Koyo the cash deposit will be 19.28 percent. For NSK the cash deposit will be 7.77 percent. These deposit requirements are effective for all shipments of tapered roller bearings four inches or less in outside diameter and components thereof entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for these firms (49 FR 8976, March 9, 1984). As we stated in those final results, for any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1981, and who is unrelated to Koyo or NSK or any previously reviewed firm, a cash deposit of 18.07 percent shall be required.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Jan W. Mares

Assistant Secretary for Import Administration.

Date: March 23, 1989.

[FR Doc. 89-7455 Filed 3-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-779-602]

Standard Carnations From Kenya; Final Results of Antidumping Duty Administration Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 14, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on standard carnations from Kenya. The review covers three producers and one third-country reseller of this merchandise to the United States and the period November 3, 1986 through March 31, 1988.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. As a result, the final results are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick,

Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 6736) the preliminary results of its administrative review of the antidumping duty order on standard carnations from Kenya (52 FR 13490, April 23, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of standard carnations. During the review period, such merchandise was classifiable under item 192.2100 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 0603.10.90. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three manufacturers/exporters and one third-country reseller of standard carnations from Kenya and the period November 3, 1986 through March 31, 1988.

Kenya Flowers, the third-country reseller with shipments during the period, provided an inadequate response to our request for information. Sulmac, the producer, did not respond to our questionnaire. Therefore, the Department used the best information available for these two firms, which was the rate published in the antidumping duty order (52 FR 13490, April 23, 1987).

Final Results of the Review

As a result of our review, the final results are unchanged from those presented in the preliminary results of review. We determine that the following margins exist for the period November 3, 1986 through March 31, 1988:

Producer/Exporter/3rd country reseller	Margin (percent)
Sulmac/Kenya Flowers GmbH	2.34
Updown	*2.34
Plantana Limited	*2.34
ADC Agriculture	*2.34

*No shipments during the period; margin represents the rate published in the antidumping duty order.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any future entries of this merchandise from a new exporter, whose first shipments occurred after March 31, 1988, and who is unrelated to any previously reviewed firm, a cash deposit of 2.34 percent shall be required. These deposit requirements are effective for all shipments of Kenyan standard carnations entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: March 22, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–7456 Filed 3–28–89; 8:45 am]

BILLING CODE 3510–DS–M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on Tuesday, April 11, 1989, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Clark Burton, (202) 377–3737.

Dated: March 23, 1989.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–7447 Filed 3–28–89; 8:45 am]

BILLING CODE 3510–DR–M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Tuesday, April 11, 1989, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 2:00 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Clark Burton, (202) 377–3737.

Dated: March 23, 1989.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-7448 Filed 3-28-89; 8:45 am]

BILLING CODE 3510-DR-M

Study of the Application of U.S. Trade Laws to Countries Developing Market-Oriented Economies; Request for Comments

AGENCY: International Trade Administration (Import Administration), Department of Commerce.

ACTION: Request for comments.

SUMMARY: Section 1336 of the Omnibus Trade and Competitiveness Act of 1988 directs the Secretary of Commerce, in consultation with other agencies, to prepare a study for the Congress by August 23, 1989, regarding the market orientation of the People's Republic of China (PRC). The study is to address, *inter alia*, the extent to which United States trade law practices can accommodate the increased market orientation of the Chinese economy and the possible need for changes in the U.S. antidumping law as it applies to foreign countries, such as the PRC, which are in transition from nonmarket to more market-oriented economies.

DATE: The Department will accept written comments on these issues until May 15, 1989.

ADDRESS: Send comments (five copies) to Susan H. Kuhbach, Director, Office of Policy/Import Administration, Room 3715, U.S. Department of Commerce, Pennsylvania Ave. and 14th Street NW., Washington, DC 20230. Comments should be addressed: Study of the Application of U.S. Trade Laws to Countries Developing Market-Oriented Economies.

FOR FURTHER INFORMATION CONTACT: Susan H. Kuhbach, (202) 377-1780.

SUPPLEMENTARY INFORMATION: Section 1336 of the Omnibus Trade and Competitiveness Act of 1988 directs the Secretary of Commerce, in consultation with other agencies, to prepare a study for the Congress by August 23, 1989, regarding the market orientation of the People's Republic of China (PRC). The study is to address: (1) The effect of the PRC's new market orientation on its market policies and price structure, and the relationship between domestic Chinese prices and world prices; (2) the extent to which United States trade law practices can accommodate the increased market orientation of the Chinese economy; and (3) the possible need for changes in the U.S. antidumping law as it applies to foreign countries, such as the PRC, which are in transition from nonmarket to more market-oriented economies.

The Department has already begun work on the first area to be covered by the study; *i.e.*, the effect of the PRC's new market orientation on its market policies and price structure, and the relationship between domestic Chinese prices and world prices. We plan to base this part of the study on information developed by U.S. Government agencies knowledgeable in this area. Therefore, we are not requesting public comment on this aspect of the study.

However, we invite purlic comment with respect to the latter two areas to be covered; *i.e.*, the extent to which United States trade law practices can accommodate the increased market orientation of the Chinese economy, and the possible need for changes in the U.S. antidumping law as it applies to foreign countries, such as the PRC, which are in transition to more market-oriented economies.

Imports from nonmarket economy countries are subject to numerous U.S. trade laws. Some of these laws, such as sections 201 and 301 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.* and 19 U.S.C. 2411 *et seq.*), do not distinguish between imports from market and nonmarket economies. Other laws, however, do distinguish between these types of economies. Section 406 of the Trade Act of 1974 applies only to imports from "Communist" countries (19 U.S.C. 2436). The countervailing duty law does not apply to imports from nonmarket economy countries (19 U.S.C. 1303, 1671 *et seq.*; *Georgetown Steel Corp. v. U.S.*, 801 F.2d 1308 Fer. Cir. 1986). The antidumping duty law establishes special procedures for determining the "fair value" of imports from nonmarket economy countries (19 U.S.C. 1677b(c)).

We intend to limit the scope of this study to those laws which provide differential treatment for nonmarket economy countries. Moreover, because the third part of the study focuses on possible amendments to the antidumping duty law for economies in transition to greater market orientation, commenters are requested to pay particular attention to this law.

The antidumping law, as amended by section 1316 of the Omnibus Trade and Competitiveness Act of 1988, directs that foreign market value will not be based on domestic prices or costs in a country which is determined to be a nonmarket country. Instead, the preferred measure of foreign market value is the nonmarket economy producer's "factors of production" valued in a market economy country(ies) which produces similar merchandise and which is at a level of economic development comparable to the nonmarket economy country.

In determining whether a country should be treated as a nonmarket economy, Commerce is to consider: (1) The extent to which the currency of the country is convertible into the currencies of other countries; (2) the extent to which wage rates are determined by free bargaining between labor and management; (3) the extent to which joint ventures or other investments by firms of other foreign countries are permitted; (4) the extent of government ownership or countrol over the means of production; and (5) the extent of government control over the allocation of resources and over the price and output decisions of enterprises.

We have identified some specific questions which we believe are relevant to this study:

(1) An economy in transition to greater market orientation may exhibit some market-like characteristics and some nonmarket-like characteristics. What types of reform are the most important determinants of whether domestic prices and costs should be used to determine whether dumping exists?

(2) These economies may introduce reforms which affect some sectors of the economy more than others. Is it possible to isolate a specific product sector and find it to be sufficiently market-oriented that domestic prices or costs can be used to determine whether dumping exists? Under what conditions should a specific product sector be found to be "market-oriented?"

(3) What role should currency convertibility play? Reforms may include limited currency convertibility in the sense that exporting enterprises are permitted to retain a portion of their foreign currenty receipts and sell it at a "market-determined" price while the remainder is sold to the government at an official, government-set exchange rate. How would these exchange rates be dealt with in a dumping determination which requires that domestic prices or costs be converted into dollars?

Interested persons are invited to comment on these specific questions, as well as any other aspects pertaining to the extent to which United States trade

law practices can accommodate the increased market orientation of the Chinese economy, and the possible need for changes in the U.S. antidumping law as it applies to foreign countries, such as the PRC, which are in transition to more market-oriented economies.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-7457 Filed 3-28-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Unocal Corporation From Objections by the Florida Department of Environmental Regulation

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On December 22, 1988, the Secretary of Commerce received a notice of appeal from Unocal Corporation (Unocal). Unocal is appealing to the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the Florida Department of Environmental Regulation (FDER) to Unocal's consistency certification for its proposed Plan of Exploration (POE) for leases on Pulley Ridge Area Blocks 629 (OCS-G 6491) and 630 (OCS-G 6492). Blocks 629 and 630 are located approximately 100 miles offshore of Naples, Florida and 45 miles north of the Dry Tortugas in the Gulf of Mexico.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

Unocal requests that the Secretary override the FDER's consistency objections based on Grounds I and II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Florida's coastal management program. *See* 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122 (1987).

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within thirty days of the publication of this notice and should be sent to Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Debbie Tucker, State of Florida, Governor's Office, The Capitol, Tallahassee, FL 32399-0001 and Brendan M. Dixon, Esquire, Unocal Corporation, P.O. Box 7600, Los Angeles, CA 90051.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the FDER, Unocal Corporation and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: March 22, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 89-7383 Filed 3-28-89; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management: Federal Consistency Appeal by Mobil Exploration & Producing U.S. Inc. From Objections by the Florida Department of Environmental Regulation

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On January 11, 1989, the Secretary of Commerce received a notice of appeal from Mobil Exploration & Producing U.S. Inc. (Mobil). Mobil is appealing to the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the Florida Department of Environmental Regulation (FDER) to Mobil's consistency certification for its proposed Plan of Exploration (POE) for a lease on Pulley Ridge Block 799. Block 799 is located approximately 50 miles north of the Dry Tortugas in the Gulf of Mexico.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

Mobil requests that the Secretary override the FDER's consistency objections based on Grounds I and II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Florida's coastal management program. *See* 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security

interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122 (1987).

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within thirty days of the publication of this notice and should be sent to Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Debbie Tucker, State of Florida, Governor's Office, The Capitol, Tallahassee, FL 32399–0001 and William C. Whittemore, Esquire, Mobil Exploration & Producing U.S. Inc., 1250 Poydras Building, New Orleans, LA 70113–1892.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the FDER, Mobil Exploration & Producing U.S. Inc., and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Date: March 22, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 89–7384 Filed 3–28–89; 8:45 am]

BILLING CODE 3510–08–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bio-Brite, Inc., having a place of business in Potomac, MD, an exclusive license in the United States to practice the invention entitled "Portable Light Dosage Systems," U.S. Patent Application Serial Number 7–167,252. The invention consists of a portable device to help patients alleviate winter depression and similar syndromes by increasing their exposure to light. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–7376 Filed 3–28–89; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Clarification of "Some" Machine Stitching and Denial of Entry of Certain Handloomed, Handmade Textile Products From India

March 27, 1989.

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

ACTION: Issuing a directive to the Commissioner of Customs clarifying the meaning of "some machine stitching" and denying entry of certain textile products.

EFFECTIVE DATE: March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987.

Shipments of certain handloomed, handmade textile products from India which do not contain 50 percent or more of hand stitching shall be denied entry.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of March 23, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to permit entry of certain handloomed, handmade textile products in Categories 360–369, 464–469 and 665–669, produced or manufactured in India, regardless of the date of export, which have been certified exempt by the Government of India, but which may contain some machine stitching.

The purpose of this directive is to clarify the meaning of "some machine stitching," as referred to in the March 23, 1987 directive. To qualify for exemption under paragraph 6 of the current bilateral textile agreement between the Governments of the United States and India, handloomed, handmade textile products certified exempt by the Government of India must be "chiefly" hand stitched, i.e., 50 percent or more of all the stitching, as measured on the products, must be hand stitched. Also correct the March 23, 1987 directive to exclude Category 363 from the exemption for handloomed, handmade textile products.

Effective on March 29, 1989, you are directed to deny entry of certain handloomed, handmade textile products in Categories 360–369 (excluding Category 363), 464–469 and 665–669, which do not contain 50 percent or more of hand stitching and/or are not certified exempt by the Government of India. An export visa will be required for goods which do not contain 50% or more hand stitching.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–7511 Filed 3–27–89; 11:46 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the resolutions made by the Committee at the 1989 Spring Conference, review the Subcommittee Issue Agenda, review the proposed overseas trip itinerary, and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATE/TIME: June 19, 1989, 9:30 a.m.–4:00 p.m.

ADDRESS: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 23, 1989.

[FR Doc. 89–7394 Filed 3–28–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Notice of Intent (NOI) for Joint Readiness Training Center

AGENCY: Headquarters, Department of Army (HQDA), DOD.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the proposed permanent stationing and operation of a Joint Readiness Training Center (JRTC).

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), HQDA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

For Further Information and to be Placed on the Project Mailing List Contact: U.S. Army Engineer District, P.O. Box 202, 167 North Main Street, Memphis, TN 38103–1984. Point of contact is Mr. Mauney, telephone 901–521–3857.

SUMMARY: The Department of the Army will prepare an EIS on the proposed permanent stationing of the JRTC. The initial proposal, which could involve approximately 35,000 rotating unit personnel, is to use lands administered by the Department of Defense. The JRTC will provide an area suitable for joint contingency exercises, during which light infantry, Air Assault, Airborne, Ranger, Special Forces, Air Force Military Airlift, Air Force Tactical Air and a Heavy Force Company Team would train. Training units would include Active and Reserve Component units under conditions which realistically reflect those anticipated in low to mid intensity combat and based upon unit wartime missions.

Need for Action: There is a need to provide light infantry joint contingency training similar to that which the National Training Center provides for heavy forces. JRTC would provide tough, realistic, joint training for U.S. Army Active and Reserve contingency forces (non-mechanized) in accordance with AirLand Battle Doctrine. JRTC exercises will replicate the stress of continuous operations, provide training that is professionally developed, controlled, and supported by expert observer/controllers with full instrumentation for realtime feedback. This training will provide a data source for training, doctrine, organization, and equipment improvements for non-mechanized forces.

Alternatives: An initial screening process which includes criteria for terrain, U.S. Air Force operations, and environmental restrictions was applied to a list in excess of 1,450 candidate sites. This process resulted in five alternatives for detailed analysis:

a. Fort Stewart, GA.

b. Fort Chaffee, AR (to include the Chaffee Complex).

c. Fort McCoy, WI.

d. Fort Lewis, WA (to include the Yakima Firing Center).

e. No action.

Scoping: Meetings will be held to allow the public the opportunity to submit information and comment on the proposal. Times and locations of the meetings will be announced through **Federal Register** and local media. The Department of the Army estimates that the draft will be available for release to the public in 2d quarter FY 90.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health) OASA (I&L).

[FR Doc. 89–7380 Filed 3–28–89; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare an Environmental Impact Statement (EIS) and To Initiate the Public Scoping Process for the Construction and Operation of a Chemical Munitions Disposal Facility at Pine Bluff Arsenal, Arkansas

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: This announces the Notice of Intent to prepare an EIS on the potential impact of the design, construction, operation and closure of the proposed chemical agent demilitarization facility at Pine Bluff Arsenal, Arkansas. The proposed facility will be used to demilitarize all chemical agents and munitions currently stored at Pine Bluff Arsenal. Potential environmental impacts will be examined for several locations of the on-site incineration facility and "no action" alternatives. The "no action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Pine Bluff Arsenal.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR, No. 38, pp. 5816–17) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. In compliance with the National Environmental Policy Act (NEPA), section 102(2)(c), the Army determined that an EIS will be prepared to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions at Pine Bluff Arsenal. The first phase of this effort will entail the collection and analyses of detailed site-specific information to ensure that the programmatic preferred alternative (on-site incineration) remains valid for Pine Bluff Arsenal. A separate report summarizing this effort will be published prior to preparation of the draft EIS for Pine Bluff Arsenal. The draft EIS should be available in the spring of 1990. Upon completion of the draft EIS, public notice of its availability for review will be announced and interested persons may provide comment on that document.

Notice of Public Meeting

Notice is further given of the Army's intention to initiate the scoping process to aid in determining the significant issues related to the proposed action at Pine Bluff Arsenal. Public, as well as Federal, State and local agency, participation and input are desired. An initial scoping meeting will be held on April 11, 1989, at 7:00 p.m., at the Creasy Auditorium, Plainview Administrative Complex, Pine Bluff Arsenal. Interested individuals, governmental agencies and private organizations are encouraged to

attend and submit information and comments for consideration by the Army.

FOR FURTHER INFORMATION CONTACT: Program Manager for Chemical Demilitarization, ATTN: SAIL–PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010–5401. Individuals desiring to be placed on a mailing list to receive additional information on the public scoping process and copies of the draft and final EIS should contact the Program Manager at the above address.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&L).

[FR Doc. 89–7385 Filed 3–28–89; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed 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 the Committee: Army Science Board (ASB).

Date of Meeting: 18 April 1989.

Time of Meeting: 0900–1700 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Explosive Systems (TEXS) will meet to review information presented at previous meeting and also to update and draft a final report. Proprietary informational briefings will be conducted. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–7389 Filed 3–28–89; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed 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 the Committee: Army Science Board (ASB).

Date of Meeting: 18–19 April 1989.

Time of Meeting: 0745–2100 hours, 18 April 1989; 0830–1730 hours, 19 April 1989.

Place: Colorado Springs, Colorado.

Agenda: The Army Science Board Ad Hoc Subgroup on Space Systems will meet for classified briefings and discussions. The subgroup is tasked with a comprehensive review of space concepts, technology, and related issues. This meeting will be a joint meeting of the subgroup with the Air Force Scientific Advisory Board Spring General Membership meeting. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). Contact the Army Science Board Administrative Officer, Sally Warner, for further information at 202–695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–7390 Filed 3–28–89; 8:45 am]

BILLING CODE 3710–8–M

Army Science 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 the Committee: Army Science Board (ASB).

Date of Meeting: 18–19 April 1989.

Time: 0800–1630 hours.

Place: Arlington, VA.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will hold its next meeting. The panel will receive briefings and hold discussions with personnel from private industry on the role of human factors in accident causation. A review of past actions of the panel as well as current and planned issues and meetings will be discussed. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–7391 Filed 3–28–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Rototherm, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01–89CE15434 to Rototherm, Inc., to produce, install, and test a prototype of a modular apparatus for laundry dryer heat recovery.

SCOPE: This grant will aid in providing funding for Rototherm, Inc., as follows: (1) Produce, demonstrate, and test medium capacity laundry driers, (2) produce, demonstrate and test a large Rototherm dryer unit and (3) be certified for construction and performance by the American Gas Association (AGA) after assisting in development of "AGA requirements."

The purpose of this project will be to build and to test modular apparatus for laundry dryer heater recovery.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to Rototherm, Inc., a private corporation with high qualifications in this specialized field of technology. The inventor and principal investigator for Rototherm, Inc., holds the patent covering this invention. Rototherm, Inc., will subcontract this work to American Gas Association which will develop with Rototherm, Inc. "AGA requirements" for construction and performance, after which they will test and certify the Rototherm equipment. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy Office of Procurement Operations ATTN: Rose Mason, MA–453.2 1000 Independence Avenue, SW Washington, DC 20585.

Thomas S. Keefe,

Director Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 89–7476 Filed 3–28–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[ERA Docket No. 88-74-NG]

Nicholson & Associates, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Nicholson & Associates, Inc. (Nicholson), blanket authorization to import and export natural gas from and to Canada. The order issued in ERA Docket No. 88-74-NG authorizes Nicholson to import up to 146 Bcf of natural gas from Canada and export up to 36.5 Bcf of gas from the United States to Canada over separate two-year terms beginning on the dates the first import and the first export commence.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

Issued in Washington, DC on March 23, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-7475 Filed 3-28-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EC89-9-000 et al.]

Minnesota Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 23, 1989.

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

1. Minnesota Power & Light Co.

[Docket No. EC89-9-000]

Take notice that Minnesota Power & Light Company on March 13, 1989 tendered for filing an application for Commission approval of the sale of certain electric substation and distribution facilities. The purchaser of a portion of the Brainer 115/34 kV substation will be the City of Brainerd, Minnesota.

Comment date: April 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Co.

[Docket No. ER89-282-000]

Take notice that on March 17, 1989, Southern California Edison Company (Edison) tendered for filing the Edison-San Diego Gas & Electric Company (SDG&E) Firm Transmission Service and Emergency Service Agreement which has been executed by Edison and SDG&E.

Under the Agreement, Edison will provide temporary firm transmission service and emergency service to SDG&E from the Point of Receipt (San Onofre Interconnection) to the Point of Delivery (Coto de Caza) for up to 7 megawatts of capacity and associated energy.

The Authorized Representatives will agree on the date service will be rendered under the agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and San Diego Gas & Electric Company.

Comment date: April 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7471 Filed 3-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1025-000 et al.]

Northwest Pipeline Corp. et al.; Natural Gas Certificate Filings

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

1. Northwest Pipeline Corporation

[Docket No. CP89-1025-000]

March 21, 1989.

Take notice that on March 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1025-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phillips Petroleum Company (Phillips), a producer, under the blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 10, 1988, as amended December 5, 1988, and January 16, 1989, under its Rate Schedule TI-1, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas for Phillips. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system.

Northwest advises that service under § 284.223(a) commenced February 1, 1989, as reported in Docket No. ST89-2614 (filed March 9, 1989). Northwest further advises that it would transport 20 MMBtu on an average day and 7,500 MMBtu annually.

Comment date: May 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Gas Services Company

[Docket No. CI87-847-002]

March 21, 1989.

Take notice that on March 15, 1989, Texas Eastern Gas Services Company (TEGAS), c/o Vinson & Elkins, 3300 First City Tower, 1001 Fannin, Houston, Texas 77002-6760, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 30, 1989, in accordance with Standard Paragraph J at the end of this notice.

3. Transcontinental Gas Pipe Line

[Docket No. CP89-1021-000]

March 21, 1989.

Take notice that on March 16, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P. O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1021-000 a request pursuant to § 157.205 of the commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service for Enron Gas Marketing, Inc. (Enron) under the blanket certificate issued in Docket No. CP88-328-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated December 15, 1988, under its Rate Schedule IT, it proposes to transport up to 400,000 dt per day equivalent of natural gas for Enron. Transco states that it would transport the gas from existing receipt points located offshore Texas, and deliver the gas at existing points onshore Texas.

Transco advises that service under § 284.223 (a) commenced February 1, 1989, as reported in Docket No. ST89-2509. Transco further advises that it would transport 50,000 dt on an average day, 400,000 dt on a peak day and 18,250,000 dt annually.

Comment date: May 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1038-000]

March 21, 1989.

Take notice that on March 9, 1989, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1038-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the Amgas, Inc. (Amgas), a Shipper and marketer of natural gas, under its blanket authorization issued in Docket No. CP86-585-000, 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.

Panhandle would perform the proposed interruptible transportation service for Amgas, pursuant to a transportation service agreement dated November 23, 1988. The transportation agreement is effective for a primary term of one month from the initial date of service and thereafter until terminated by either party upon at least six months prior notice. Panhandle proposes to transport 220 Dekatherms (Dth) of natural gas on a peak day; 145Dth on an average day; and on an annual basis 52,925 Dth of natural gas for Amgas. Panhandle proposes to receive the subject gas at various existing points of receipt on its system in Colorado, Illinois, Kansas, Oklahoma, Texas and Wyoming. Panhandle will then transport and redeliver the gas less fuel used and unaccounted for line loss to Illinois Power Company in Macon and Champaign Counties, Illinois. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on February 1, 1989, as reported in Docket No. ST89-2530-000.

Comment date: May 5, 1989 in accordance with Standard Paragraph G at the end of the notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1030-000]

March 21, 1989.

Take notice that on March 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1030-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Phillips Natural Gas Company (Phillips), under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 3,450 dekatherms of natural gas per day for Phillips, a Hinshaw pipeline, from receipt points located in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois to Union Electric in Cole County, Missouri. Panhandle anticipates transporting an annual volume of 1,259,250 dekatherms.

Panhandle states that the transportation of natural gas for Phillips commenced February 1, 1989, as reported in Docket No. ST89-2534-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP86-585-000.

Comment date: May 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89-1013-000]

March 21, 1989.

Take notice that on March 14, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1013-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Oxy USA, Inc. (Oxy), a producer, under its blanket certificate issued in Docket No. CP88-6-000 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.

United states that it proposes to transport natural gas on behalf of OXY from points of receipt located in Texas to a point of delivery located in Texas.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Oxy would be 2,575 MMBtu equivalent, 2,575 MMBtu equivalent and 939,875 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-2289, filed with the Commission on February 21, 1989, it reported that Transportation service for Oxy had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP89-1023-000]

March 21, 1989.

Take notice that on March 15, 1989, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1023-000 a request pursuant to §§ 157.205 and 284.223 of the Commisson's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of EP Operating Company (EP Operating), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-582-000 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.

NGPL proposes to transport for EP Operating on an interruptible basis up to 52,000 MMBtu of natural gas on a peak day, 5,000 MMBtu of natural gas on an average day, and 1,825,000 MMBtu of natural gas on an annual basis. NGPL states that consistent with its Rate Schedule ITS, EP Operating may request and NGPL may agree to accept additional quantities of overrun gas. It is indicated that NGPL would receive the gas at points in Texas and offshore Louisiana for delivery at points in Iowa, Illinois and Louisiana. It is stated that service under § 284.223(a) commenced February 1, 1989, as reported in Docket No. ST89–2687. NGPL indicates that no new facilities are proposed herein.

Comment date: May 5 1989 in accordance with Standard Paragraph G at the end of the notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89–1032–000]

March 21, 1989.

Take notice that on March 17, 1989, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1032–000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Coastal Gas Marketing Company under Applicant's blanket cetificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant further states that pursuant to a transportation agreement dated February 17, 1989, it proposes to transport natural gas for Coastal Gas Marketing Company, a marketer, from points of receipt located offshore Louisiana and the states of Pennsylvania, Kentucky, Louisiana, Mississippi, Texas, Alabama, and New York. The points of delivery are located in the states of Louisiana, Texas West Virginia, Connecticut, Ohio Pennsylvania, Kentucky, New York, and Tennessee. The ultimate points of delivery are located in the states of West Virginia and Tennessee.

The applicant further states that the maximum daily quantity is 300,000 dekatherms under the contract. Service under § 284.223(a) commenced February 21, 1989, as reported in Docket No. ST89–2662 (filed March 15, 1989).

Comment date: May 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP89–1011–000]

March 21, 1989.

Take notice that on March 14, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1011–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Texican Natural Gas (Texican), a marketer, under its blanket certificate issued in Docket No. CP88–6–000 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.

United states that it proposes to transport natural gas on behalf of Texican from a point of receipt located in Texas to three points of delivery located in Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Texican would be 5,150 MMBtu equivalent, 5,150 MMBtu equivalent and 1,879,750 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89–2288, filed with the Commission on February 21, 1989, it reported that transportation service for Texican had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–970–000]

March 21, 1989.

Take notice that on March 9, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–970–000, an abbreviated application pursuant to section 7(b) of the Natural Gas Act, for an order granting permission and approval to partially abandon firm sales service to fifteen utilities, as all more fully set forth in the application which is on file with the Commission and open to public inspection.

These utilities have requested Northern to obtain Commission approval of total conversions of 96,361 Mcf per day, of which 91,861 Mcf per day is CD–1 service and 4,500 Mcf per day is PL–1 service. The contract demand conversion option made available to these fifteen utilities are consistent with Order Nos. 436 and 500 guidelines. Northern seeks approval in this application to abandon that portion of its certificated sales obligation to the fifteen utilities which was converted to firm transportation service.

Comment date: April 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

11. Northwest Pipeline Corporation

[Docket No. CP89–1041–000]

March 21, 1989.

Take notice that on March 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1041–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Salem Black Top and Asphalt Paving, Inc. (Salem Black Top), an end user, under the blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated July 15, 1988, as amended December 5, 1988, under its Rate Schedule TI–1, it proposes to transport up to 540 MMBtu per day equivalent of natural gas for Salem Black Top. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system.

Northwest advises that service under § 284.223(a) commenced February 13, 1989, as reported in Docket No. ST89–2615 (filed March 9, 1989). Northwest further advises that it would transport 10 MMBtu on an average day and 3,500 MMBtu annually.

Comment date: May 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corporation

[Docket No. CP89–1027–000]

March 21, 1989.

Take notice that on March 17, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1027–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Koch Hydrocarbon Company (Koch), a producer, under the blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7 of the

Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 10, 1988, as amended June 8, 1988, October 18, 1988, and December 5, 1988, under its Rate Schedule TI–1, it proposes to transport up to 150,000 MMBtu per day equivalent of natural gas for Koch. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system.

Northwest advises that service under § 284.223(a) commenced February 3, 1989, as reported in Docket No. ST89–2613 (filed March 9, 1989). Northwest further advises that it would transport 750 MMBtu on an average day and 275,000 MMBtu annually.

Comment date: May 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Northern Natural Gas Company; Division of Enron Corp.

[Docket No. CP89–1046–000]

March 22, 1989.

Take notice that on March 20, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1046–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc. (Enron), a marketer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated February 3, 1989, under its Rate Schedule IT–1, it proposes to transport up to 150,000 MMBtu per day equivalent of natural gas for Enron. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced February 3, 1989, as reported in Docket No. ST89–2475 (filed March 1, 1989). Northern further advises that it would transport 112,500 MMBtu on an average day and 54,750,000 MMBtu annually.

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Trunkline Gas Company

[Docket No. CP89–1042–000]

March 22, 1989.

Take notice that on March 17, 1989, Trunkline Gas Company (Trunkline) P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1042–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for ANR Gathering Company (ANR Gathering), a marketer of natural gas, under Trunkline's blanket transportation certificate authority issued April 30, 1987, in Docket No. CP86–586–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states it will receive the gas at various existing points on its system in the states of Texas, Louisiana, and Illinois and deliver the gas for the account of ANR Gathering to Florida Gas in Calcasieu Parish, Louisiana.

Trunkline proposes to transport up to 100,000 dt of gas per peak and average day and approximately 36,500,000 dt of gas annually. Trunkline states that the transportation service commenced under the 120-day automatic authorizaton of § 284.223(a) of the Commission's Regulations on February 8, 1989, pursuant to a transportation agreement dated November 17, 1988, Trunkline notified the Commission of the commencement of the transportation service in Docket No. ST89–2523–000.

Comment date: May 8, 1989, in accordance with Standard paragraph G at the end of this notice.

15. Northern Border Pipeline Company Certificates

[Docket No. CP89–576–000]

March 22, 1989.

Take notice that on January 10, 1989, Northern Border Pipeline Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP89–576–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain compressor and appurtenant facilities located in Clark County, South Dakota and an additional meter run at the Venture Meter Station all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a single-unit 16,000 horsepower compressor station and appurtenant facilities at Compressor Station Site No. 10 located in Clark County, South Dakota and an additional 12-inch meter run at its Ventura Meter Station. The estimated cost of the proposed facilities is $16.2 million. Applicant proposes to finance this proposal, initially with funds on hand, funds generated internally, or short term financing which could be rolled into permanent financing.

Applicant states that the proposed facilities will allow it to transport pursuant to its Order 436/500 blanket transportation certificate 100,000 Mcf of natural gas per day for Western Gas Marketing Limited (WGM), as agent for TransCanada PipeLines Limited (TransCanada) on a long-term firm basis. The WGM volumes will be received by Applicant at an existing point of receipt on the international boundary near Port of Morgan, Montana and will be transported and redelivered at an existing point of delivery near Ventura, Iowa.

Applicant indicates that TransCanada's election of firm transportation service is pursuant to its rights to set forth in the TransCanada Service Agreement dated December 15, 1980, as amended September 28, 1988, between Northern Border and TransCanada. Applicant states that WGM intends to sell the volumes it proposes to transport to several local distribution companies on a long-term basis.

Applicant further states that WGM will pay a monthly charge for the transportation service computed on a cost of service basis as set forth in Rate Schedule T–1 of its presently effective FERC Gas Tariff Original Volume No. 1. The 100% load factor transportation cost per Mcf for the first year of operation to transport natural gas volumes from Port of Morgan to Ventura is projected to be 53.7 cents compared to 57.4 cents without the additional volumes. The cost of service allocated to the existing Rate Schedule T–1 shippers will be reduced by approximately $15.4 million annually as a result of the expansion of Applicant's system to accommodate the WGM natural gas volumes.

Comment date: April 12, 1989, in accordance with Standard Paragraph F at the end of this notice.

16. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1035-000]

March 22, 1989.

Take notice that on March 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1035-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of the Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 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.

Panhandle states that it proposes to transport natural gas on behalf of Amgas from various points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois to Central Illinois Light Company in Tazewell County, Illinois.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport for Amgas would be 25 dt equivalent of natural gas, 5 dt equivalent of natural gas and 1,825 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST-89-2535, it reported that transportation service for Amgas had begun on February 4, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1029-000]

March 22, 1989.

Take notice that on March 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 16242, Houston, Texas 77251-1642, filed in Docket No. CP89-1029-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 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.

Panhandle states that it proposes to transport natural gas for Amgas from various points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois to Central Illinois Light Company in Tazewell County, Illinois.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport for Amgas would be 120 dt equivalent of natural gas, 24 dt equivalent of natural gas and 8,760 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89-2500, it reported that transportation service for Amgas had begun on February 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 8, 1989 in accordance with Standard Paragraph G at the end of the 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 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 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 intevention 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.

Standard Paragraph:

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date 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 requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7397 Filed 3-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-105-001]

Arkla Energy Resources, a Division of Arkla, Inc.; Proposed Change in FERC Gas Tariff

March 23, 1989.

Take notice that on March 16, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc. tendered for filing the following tariff sheet to its FERC Gas Tariff, Original Volume No. 1-A:

First Substitute First Revised Sheet

No. 76B

AER states that this sheet is filed in order to correct a clerical error found on First Revised Sheet No. 76B in AER's March 13, 1989 filing. AER proposes an effective date of March 2, 1989.

Any person desiring to be heard or to protest the subject 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 385.214 and 385.211. All such motions or protests must be filed by March 30, 1989. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7399 Filed 3-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-15-001]

Mid Louisiana Gas Co.; Compliance of Filing

March 23, 1989.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on March 17, 1989, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective March 1, 1989:

	Superseding
Substitute Sixty-Seventh Revised Sheet No. 3a.	Sixty-Seventh Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of Substitute Sixty-Seventh Revised Sheet No. 3a and is to comply with the Commission's Letter Order issued February 28, 1989 in the above referenced Docket by restating the information contained at the bottom of the Tariff Sheet.

Copies of this filing have been mailed to Mid Louisiana'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 protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211 and 385.214). All such motions of protests should be filed on or before March 30, 1989. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7400 Filed 3-28-89; 8:45 am]

BILLING CODE 6717-01-M

Designating a New Docket Prefix and Cancelling the Old Docket Prefix for Oil Pipeline Depreciation Matters

March 21, 1989.

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or to the establishment of valuations for pipelines was transferred from the Interstate Commerce Commission (ICC) to the Federal Energy Regulatory Commission (FERC), pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46267 (September 13, 1977). Section 17(2) of the Interstate Commerce Act authorizes the FERC to delegate any of its work, business, or functions to a Board and by Order No. 3, issued February 10, 1978, the Oil Pipeline Board (OPB) was established.

Take notice that as a result of these orders the FERC has adopted a new docket prefix to be assigned to certain oil pipeline depreciation matters brought before the OPB. To supplement the system established by the April 2, 1979, Notice for depreciation and related matters as it pertains to oil pipelines, the following docket prefix is assigned:

DO—Depreciation and related matters as it pertains to oil pipelines. Each depreciation sub-order will carry a number beginning with the two-letter prefix "DO" followed by the last two digits of the fiscal year in which the proceeding is initiated, followed by up to a three digit number assigned to a particular company for the life of the company, followed by a three digit number indicating the sequence of depreciation sub-orders issued to a particular company in the same fiscal year.

The docket prefix "PD", authorized on April 2, 1979, by the "Notice Designating New Docket Prefixes for Oil Pipeline Matters," is hereby cancelled upon the issuance of this notice.

Should a petition for review of any matter decided by the Oil Pipeline Board be filed with the Commission, the matter will continue to carry the originally assigned "DO" docket number.

This notice is issued for the information and aid of the public and practitioners before the Commission as an explanation of the docket prefix used by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7398 Filed 3-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10578-001 Kansas]

Prodek, Inc.; Surrender of Preliminary Permit

March 23, 1989.

Take notice that Prodek, Inc., permittee for the Milford Dam Project, located on the Republican River near Junction City, Geary County, Kansas, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 15, 1988, and would have expired on August 31, 1991. The permittee conducted a survey of operating utilities in the region surrounding Milford Dam and has concluded that avoided costs from a run-of-river hydroelectric project there would not likely be sufficient, any time within the foreseeable future, to justify and expenditure needed to complete construction.

The permittee filed the request on February 21, 1989, and the preliminary permit for Project No. 10578 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-7401 Filed 3-28-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3545-7]

Announcement of Public Meeting on Enforcement of Gasoline Volatility Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of a public meeting.

SUMMARY: EPA will hold a public meeting to inform regulated parties of EPA's strategy for enforcing its gasoline volatility regulations which were published in the **Federal Register** on March 22, 1989.

DATES: Public meeting, April 28, 1989, 10:00 a.m.; written questions should be submitted on or before April 21, 1989.

ADDRESSES: The meeting will be held at the Sheraton National, 900 South Orme Street, Corner of Columbia Pike and Washington Boulevard, Arlington, Virginia. Written questions should be directed to Marilyn Bennett, Investigations and Enforcement Branch, Field Operations and Support Division, Environmental Protection Agency, EN-397F, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, (202) 475-8230.

SUPPLEMENTARY INFORMATION: On March 22, 1989 (54 FR 11868), EPA published a notice of final rulemaking promulgating regulations to reduce summertime commercial gasoline volatility (to be codified within 40 CFR. Part 80). Because many issues have been raised concerning the enforcement of these regulations, EPA will hold a public meeting to inform regulated and other interested parties of its enforcement strategy and to receive feedback on its proposed enforcement actions. Among the topics to be addressed are the following:

(1) Where EPA will concentrate its enforcement its enforcement efforts.

(2) Lead time problems.

(3) Sampling and testing procedures, including the status of field screening tests.

(4) Classification and applicable Reid vapor pressure (RVP) standard of product at upstream facilities.

(5) Enforcement tolerance.

(6) Liability of regulated parties.

(7) Defenses of regulated parties, including the kind of oversight/compliance assurance programs EPA will find acceptable; where regulated parties can get RVP testing done; the kind of proof a regulated party must provide to establish he did not cause a violation; and the kind of proof EPA will accept concerning the ethanol content of gasoline.

(8) Penalty policy.

(9) Remedial action.

(10) Means to expedite inspections.

(11) Notification of violations.

Written questions submitted in advance will be given priority. If time allows, written questions submitted at the meeting may also be addressed. To aid in planning, EPA would appreciate advance notice from parties wishing to attend the meeting. Parties may contact Marilyn Bennett at (202) 475-8230 to notify EPA of their plans to atend.

Date: March 23, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-7426 Filed 3-28-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3544-7]

Science Advisory Board; Excutive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board (SAB) will meet on April 24 from 9:00 a.m. to 5:00 p.m. and on April 25 from 9:00 a.m. to 12:00 noon in the Administrator's Conference Room 1101, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC.

The purpose of the meeting is to enable the Executive Committee to act on reports from its subcommittees and standing ccmmittees that have been completed since the last meeting and receive status reports from each of the committees. In addition, the SAB will entertain Agency requests for advice in the areas of relative risk reduction and of the risks associated with passive smoking. The new Administrator will discuss general issues with the Board. Ihe Board will engage in extended discussion about the current and future mission and functions of the SAB.

On April 25 from 1:00 p.m. until 5:00 p.m. there will be a meeting of the Executive Committee's Ad Hoc Subcommittee on SAB Mission and Functions. This group will examine the goals and direction of the SAB. SAB's overall objective is to provide advice to the EPA Administrator on the scientific and technical aspects of environmental problems and issues. Ihe Subcommittee will address the functional objectives to see if they could be improved.

The meetings are open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at (202) 382-4126 by April 20, 1989.

Date: March 23, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-7427 Filed 3-28-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30295; FRL-3545-8]

Binab USA, Inc.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to conditionally register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by April 28, 1989.

ADDRESS: By mail submit comments identified by the document control number [OPP-30295] and the file numbers 61463-R and 61463-E to:

Susan Lewis, Acting Product Manager (PM) 21, Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM#2, Attn: PM 21, Registration Division (H7505C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Acting PM 21, Rm. 227, CM#2, (703-557-1900).

SUPPLEMENTARY INFORMATION: Binab USA, Inc., c/o E.R. Butts International, Inc., 555 Clinton Ave., PO Box 3337,

Bridgeport, CT 06605–0337, has submitted applications to EPA to conditionally register the pesticide products Binab ™ T Pellets Biorational Fungicide (EPA File Symbol 61463–R), for use on wooden utility poles, playground structures, and fence posts to control internal decay; and for Binab ™ T Wettable Powder Biorational Fungicide (EPA File Symbol 61463–E), for use to control decay on pruning wounds of trees. Both products contain the active ingredients *trichoderma harzianum* (ATCC 20476) and *trichoderma polysporum* (ATCC 20475) at 14 and 16 percent respectively; pursuant to the provision of section 3(c)(4) of FIFRA. The applications propose that the products be classified for general use. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Information Branch (PIB) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PIB office (703–557–2805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: March 16, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–7428 Filed 3–28–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44528; FRL–3545–4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on vinylidene fluoride (CAS No. 75–38–7) and biphenyl (CAS No. 95–52–4), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for vinylidene fluoride were submitted by the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.1700. They were received by EPA on March 6, 1989. The submission describes a thirteen-week inhalation toxicity study of vinylidene fluoride in the mouse. Ninety-day subchronic testing is required by this test rule. Vinylidene fluoride is used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for biphenyl was submitted by Chevron Environmental Health Center, Inc. pursuant to a test rule at 40 CFR 799.925. They were received by EPA on March 16, 1989. The submission describes a flow through oyster bioconcentration test. Chemical fate testing is required by this test rule. Biphenyl is used primarily to produce dye carriers, heat transfer fluids and alkylated biphenyls.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44528). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: March 21, 1989.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89–7429 Filed 3–28–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59269; FRL–3545–6]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by: T 89–8, March 24, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–59269]" and the specific TME number should be sent to: TSCA Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room 201 East Tower, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street, SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89–8

Close of Review Period: April 7, 1989.
Importer: Confidential.
Chemical: (G) Methimidaz substituted Cu Phthal.
Use/Import: (S) Paper dye intermediate used in further manufacture of dye. Import range: Confidential.

Date: March 22, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-7430 Filed 3-28-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59865; FRL-3545-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eight such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-64	March 6, 1989.
Y 89-68	March 16, 1989.
Y 89-70	March 23, 1989.
Y 89-71, 89-72	March 27, 1989.
Y 89-73	March 30, 1989.
Y 89-74	April 3, 1989.
Y 89-75	April 4, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-64

Importer: SKW Chemicals, Inc.
Chemical: (G) Ketone resin.
Use/Import: (G) Additive to provide dispersion preparaties. Import range: Confidential.
Toxicity Data: Acute oral toxicity: LD50>5,000 species (Rat). Skin irritation: negligible species (Rabbit).

Y 89-68

Manufacturer: Confidential.
Chemical: (G) Polyester polturethane polymer.
Use/Production: (G) Adhesive and coating. Prod. range: Confidential.

Y 89-70

Importer: GE Plastics.
Chemical: (G) Poly(bisphenol-Alpha carbonate).
Use/Import: (G) Plastic components for electrical devices, for medical devices, for business machine, for information. Import range: Confidential.

Y 89-71

Manufacturer: SuVAR Corporation.
Chemical: (G) Alkyd resin.
Use/Production: (G) Used as a vehicle component in flushed pigment formulation for use in printing inks. Prod. range: Confidential.

Y 89-72

Manufacturer: Confidential.
Chemical: (G) Chain terminated alkyd resin.
Use/Production: (S) Low V.O.C. protective coatings. Prod. range: 4,500 kg/yr.

Y 89-73

Manufacturer: Monsanto Company, Inc.
Chemical: (G) Adipic acid hexamethylenediamine polymer mod. with hydrocarbon elast.
Use/Production: (S) Molded electrical and automotive parts. Prod. range: Confidential.

Y 89-74

Manufacturer: Confidential.
Chemical: (G) Acrylated alkyd.
Use/Production: (G) Paint. Prod. range: Confidential.

Y 89-75

Manufacturer: Confidential.
Chemical: (G) Fatty acid-allyl alcohol-styrene terpolymer.
Use/Production: (S) Binder in general metal coatings. Prod. range: Confidential.

Date: March 21, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-7431 Filed 3-28-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3545-2]

Underground Storage Tank Training Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for information on Underground Storage Tank Training Programs.

SUMMARY: EPA's Office of Underground Storage Tanks (OUST) would like to help State and local agencies and private organizations advertise their underground storage tank (UST) training program to potential participants. OUST would also like to collect information on UST training sources that may serve as a resource for developing new training programs. OUST is requesting information on State, local and private training programs relevant to underground storage tank (UST) regulation and clean-up. OUST will distribute a list of Federal and State UST program staff to State, local and private organizations which offer, sponsor, or authorize UST related courses and training materials.

DATES: By April 15, 1989, please provide us with a brief description of your UST training programs. If they are available, please include brochures, outlines, schedules, etc.

ADDRESS: Information should be sent to: Steve Vineski, Training Coordinator, Office of Underground Storage Tanks (OS 420-D), Environmental Protection Agency, Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Steve Vineski, EPA/OUST at the above address or call 202/475-9723.

Dated: March 17, 1989.

Henry L. Longest, II,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89-7432 Filed 3-28-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

Filing Dates for Wyoming Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Wyoming Special Election.

SUMMARY: Committees required to file reports in connection with the Wyoming Special Election to be held on April 26, 1989, must file a 12-day Pre-Election Report by April 14, 1989 and a 30-day Post-Election Report by May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information

Office, 999 E St., NW., Washington, DC 20463, Telephone: (202) 376–3120; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Election and all other political committees, not filing monthly, which support candidates in this election shall file a 12-day Pre-Election Report due on April 14, 1989, with coverage dates from the close of books of the last report filed or the date of the committee's first activity, through April 6, 1989. These committees are also required to file a 30-day Post-Election Report due on May 26, 1989, with coverage dates from April 7, 1989, through May 16, 1989.

After filing these reports, committees should file a Mid-Year Report due July 31, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

Dated: March 24, 1989.

[FR Doc. 89–7446 Filed 3–28–89; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have 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.

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 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 applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York; to engage *de novo* through its subsidiary Chase Community Development Corporation, New York, New York, in lending and investment activities to promote community welfare, such as the rehabilitation and development of housing in low- and moderate-income areas pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *American Bankshares, Inc.,* Marietta, Georgia; to engage *de novo* through its subsidiary, American Bank Financing, Inc., Marietta, Georgia, in commercial financing and providing loans guaranteed by the Small Business Administration. Specifically, Company proposes to: (1) Serve the commercial customers within the Southeast market area by lending money against their accounts receivable and inventory; and, (2) serve the commercial customers within the Southeast market by providing loans available through SBA guaranty pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the Southeastern states of Georgia, Alabama, District of Columbia, Florida, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

Board of Governors of the Federal Reserve System, March 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–7372 Filed 3–28–89; 8:45 am]

BILLING CODE 6210–01–M

R.E. Farber; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89–5759) published at page 10585 of the issue for Tuesday, March 14, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Rudolph E. Farber is amended to read as follows:

1. **Rudolph E. Farber,** and the Arnold Farber Trust, under will, for the benefit of Sharon Farber Monroe, Neosho, Missouri, to acquire respectively, an additional 0.06 percent and 0.86 percent of the voting shares of Anderson Bancshares, Inc., Neosho, Missouri, and thereby indirectly acquire Anderson State Bank, Neosho, Missouri. Under the proposal Mr. Farber's cumulative total ownership will be 1.86 percent of the voting shares and the Trust's cumulative total ownership will be 23.61 percent of the voting shares. Mr. Farber, as trustee of the Trust, will control a cumulative total of 25.47 percent of the voting shares.

Comments on this application must be received by April 12, 1989.

Board of Governors of the Federal Reserve System, March 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–7375 Filed 3–28–89; 8:45 am]

BILLING CODE 6210–01–M

The Sanwa Bank, Ltd., Osaka, Japan; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent and To Engage in Full-Service Brokerage for Institutional and Retail Customers

The Sanwa Bank, Limited, Osaka, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage *de novo* through Sanwa-BGK Securities Co., L.P., New York, New York ("Company"), in underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1–4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Applicant has also applied to engage through Company in the offering of securities brokerage services and investment advisory services to retail and institutional customers. The Board has previously approved the provision of these services in *PNC Financial Corp,* 75 Federal Reserve Bulletin ____ (Order dated March 14, 1989). *See also Signet*

Banking Corporation, 75 Federal Reserve Bulletin 34 (1989); and *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988).

In addition, Applicant has applied to engage in serving as the advisory company for a mortgage or a real estate trust; serving as investment advisor (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20)) to an investment company registered under that act, including sponsoring, organizing and managing a closed-end investment company; providing portfolio investment advice to institutional customers; furnishing general economic information and advice, general economic statistical forecasting services and industry studies to institutional customers; and providing financial advice to state and local governments, such as with respect to the issuance of their securities. 12 CFR 225.25(b)(4). Company would conduct the proposed activities on a nationwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite and deal in ineligible securities as set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987).

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Applicant states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 21, 1989.

Board of Governors of the Federal Reserve System, March 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–7374 Filed 3–28–89; 8:45 am]

BILLING CODE 6210–01–M

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 April 12, 1989.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Trans Financial Bancorp Employee Stock Ownership Plan*, Bowling Green, Kentucky; to acquire an additional 9.4 percent of the voting shares of Trans Financial Bancorp, Inc., Bowling Green, Kentucky, for a total of 24.9 percent of the voting shares, and thereby indirectly acquire The Citizens National Bank of Bowling Green, Bowling Green, Kentucky, and Citizens Bank and Trust Company, Glasgow, Kentucky.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John G. Kent*, Castle Rock, Colorado; to acquire an additional 3.47 percent of the voting shares of The Banking Group, Ltd., Castle Rock, Colorado, for a total of 25.25 percent of the voting shares and thereby indirectly acquire The First National Bank of Castle Rock, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, March 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–7373 Filed 3–28–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an extension of an information collection approval for State Grants for Dependent Care Planning and Development.

ADDRESSES: Copies of the information collection may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested extension should be sent directly to Shannah Koss-McCallum, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Extension Document

Title: State Grants for Dependent Care Planning and Development

OMB No.: 0980–0178

Description: As provided by law, grants are available to States in FY 1989 for the planning, development, establishment, expansion, or improvement of State and local dependent care resource and referral systems and programs to furnish school age child care before and after school.

Annual Number of Respondents: 57

Annual Frequency: 1

Average Burden Hours Per Response: 20

Total Burden Hours: 1,140.

Dated: March 23, 1989.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 89–7393 Filed 3–28–89; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15; AA-6978-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Kootznoowoo, Incorporated, for approximately 1,850 acres. The lands involved are in the vicinity of Angoon, Alaska.

T. 77 S., R. 87 E., Copper River Meridian, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960.)

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 April 28, 1989, to file an appeal. 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 at the 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 of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Nancy L. Larsen,

Chief, Branch of KCS Adjudication.

[FR Doc. 89-7478 Filed 3-28-89; 4:07 pm]

BILLING CODE 4310-JA-M

DEPARTMENT OF THE INTERIOR

[UT-060-09-4320-08]

Plan Amendment for Price River Resources Area Plan, Emery County, UT

AGENCY: Bureau of Land Management, Moab.

ACTION: Notice of intent—Plan amendment for Price River Resource Area Plan, Emery County, Utah.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) intends to amend an existing planning document.

SUPPLEMENTARY INFORMATION: The Price River Resource Area Management Framework Plan was approved on September 2, 1983. In the preparation of this plan, there was a resource allocation conflict between domestic livestock and wild bighorn sheep in six grazing allotments. The conflict was resolved in favor of the existing domestic livestock grazing permits. This decision precludes augmentation of the bighorn sheep population. The grazing preference on four of the six allotments was relinquished by the grazing permittees after a negotiated settlement with the Utah Division of Wildlife Resources. The proposed plan amendment would manage the four vacant allotments—Bighorn, Elliott Mountain, River, and Pack Trail—for wild land values, including bighorn sheep, riparian, and recreation. Grazing of domestic livestock would be limited to trailing and recreational pack stock. The amendment would provide for the same management of the Last Chance and Price River South allotments should the preference be relinquished or otherwise lost during the life of the plan. Scope of the amendment is limited to forage allocation. The area affected by this amendment is located in northeastern Emery County, Utah. The area encompasses approximately 122,500 acres of public land and 12,000 acres of state and private lands. These allotments are mostly within the Desolation Canyon (UT-068A) and Turtle Canyon (UT-067) Wilderness Study Areas.

The plan amendment and accompanying environmental assessment are available for public review and comment from the Price River Resource Area. For information or to submit comments or questions, contact Mark Bailey, Price River Resource Area Manager, 900 North 700 East, Price, Utah 84501 or call (801) 637-4584. Public comments will be accepted for 30 days after the publication of this notice. There will also be opportunity for public comment on the final planning decision.

Date: March 17, 1989.

James M. Parker,

State Director.

[FR Doc. 89-7378 Filed 3-28-89; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF THE INTERIOR

[CA-940-09-4111-15; CACA 12981]

California; Proposed Reinstatement of Terminated Oil and Gas Lease Under the Provisions of Public Law 97-451, a Petition for Reinstatement of Oil and Gas Lease CACA 12981 for Lands in Kern County, California, Was Timely Filed and Was Accompanied by all Required Rentals and Royalties Accruing From October 1, 1988, 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 $5.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative 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 Leasing Act of 1920 (30 USC 188), the Bureau of Land Management is proposing to reinstate the lease effective October 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Date: March 21, 1989.

Fred O'Ferrall,

Chief, Leasable Minerals Section.

[FR Doc. 89-7479 Filed 3-28-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4212-13; CACA 19064]

California Realty Action; Exchange of Public and Private Lands in Trinity County and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire the non-Federal lands located near the shore of the Trinity River. Because its unspoiled nature and the spectacular scenery within the area, the Trinity river was designated a Wild and Scenic River by Congress in 1978. The acquisition will afford added protection for this valuable resource. The land acquired in this exchange will

be opened to operation of the public land laws and to operation of the United States mining and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 978–4815.

1. The United States issued a land exchange conveyance document to the Santa Fe Pacific Timber Company on June 3, 1987, pursuant to the authority of sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described public land:

Mount Diablo Meridian, California

T. 33 N., R. 9 W.,
Sec. 14, W½.

The area described contains 320 acres in Trinity County.

2. In exchange for the land described in paragraph 1, on June 2, 1987, the United States accepted title to the following described private land from the Santa Fe Pacific Timber Company:

Mount Diablo Meridian, California

Parcel I

T. 32 N., R. 10 W.,
Sec. 1, SW¼SW¼.

Parcel II

T. 33 N., R. 9 W.,
Sec. 31, SE¼NE¼ and NE¼SE¼.
Subject to an easement for tunnel, ditch and pipeline purposes and appurtenances thereto as granted to P.M. Paulsen by deed recorded September 29, 1911, Book 35 Deeds, Page 95, Trinity County Records.

Parcel III

T. 33 N., R. 9 W.,
Sec. 29, E½SE¼.
Reserving therefrom an easement for road purposes over and across an existing road located in the westerly one-half of said parcel.

Parcel IV

T. 33 N., R. 10 W.,
Sec. 33, S½SW¼, W½SE¼, W½NE¼S E¼, and W½E½NE¼SE¼.
Grantor also hereby grants to the United States, and its assigns, and to the public in general a permanent easement to locate, construct, use, control, maintain, improve, relocate and repair a foot trail, being 10 feet in width and located parallel and adjacent to the high water mark on the north side of the Trinity River as shown on Exhibit A attached to the deed.

The areas described aggregate 390 acres in Trinity County.

3. The value of the non-Federal lands is equal to the value of the public land; therefore, no equalization payment was required.

4. At 10 a.m. on May 1, 1989, the land described in paragraph 2 shall be open to operation of the public land laws generally, subject to valid existing rights, the requirements of applicable law, and the provision of the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906), as amended. All valid applications received at or prior to 10 a.m. on May 1, 1989 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on May 1, 1989, the land described in paragraph 2 above shall be open to location under the United States mining laws subject to the provision of the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906), as amended. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on May 1, 1989, the land described in paragraph 2 shall be open to applications and offers under the mineral leasing laws subject to the provision of the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906), as amended.

Dated: March 20, 1989.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 89-7480 Filed 3-28-89; 8:45 am]

BILLING CODE 4310-40-M

[ID-942-09-4730-12]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., March 17, 1989.

The plat representing the dependent resurvey of a portion of the south, east, and north boundaries, and subdivisional lines, and the subdivision of certain sections, T. 8 S., R. 12 E., Boise Meridian, Idaho, Group No. 674 was accepted March 10, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

March 17, 1989.

[FR Doc. 89-7481 Filed 3-28-89; 8:45 am]

BILLING CODE 4310-GG-M

[INT-FSFES-89-10]

Bureau of Reclamation

Dolores Project; Montezuma and Dolores Counties, CO

AGENCY: Bureau of Reclamation (USBR).

ACTION: Notice of availability of Final Supplement to Final Environmental Statement (FSFES).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation) has prepared the FSFES for the Dolores Project, Colorado. The project develops water from the Dolores River for municipal and agricultural uses in Montezuma and Dolores Counties in southwestern Colorado. The FSFES addresses modifications to the project plan since the filing of the Final Environmental Statement (INT-FES-77-12) in 1977.

ADDRESSES: Single copies of the FSFES may be obtained on request to the Regional Director at the address below:

Copies of the FSFES are available for inspection at the following locations:

Regional Director, Upper Colorado Region, Bureau of Reclamation, P.O. Box 11568, Salt Lake City, UT 84147; Telephone: (801) 524–5580.

Durango Projects Office, Bureau of Reclamation, 835 2nd Avenue, P.O. Box 640, Durango, CO 81302–0640; Telephone: (303) 385–6529.

Libraries

Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, Room 167, Denver, CO 80225

Cortez City Library, Cortez, CO

Fort Lewis College Library, Durango, CO

Norlin Library, Boulder, CO

Penrose Library, Denver, CO

William E. Morgan Library, Fort Collins, CO

FOR FURTHER INFORMATION CONTACT:

Mr. Harold Sersland (Regional Environmental Officer, Upper Colorado Region, Salt Lake City, UT), (801) 524–5580; or

Dr. Wayne O. Deason (Manager, Environmental Services, Bureau of

Reclamation, Denver, CO), (303) 236–9336.

SUPPLEMENTARY INFORMATION: The FSFES presents modifications to the plan of development which was originally presented in the 1977 FES (INT–FES–77–12) and the 1986 Draft Supplement to the FES (INT–DES–88–11). The modifications add salinity control as a project purpose; delete Monument Creek Reservoir and the Cortez-Towaoc Municipal and Industrial Pipeline from the proposed plan; and move the alignment of the Towaoc Canal from the west to the east side of South Montezuma Valley.

Other modifications combine the capacities of two pumping plants into one plant near Dove Creek, Colorado; construct a delivery pumping plant near Cahone, Colorado; and increase the capacities of McPhee and Towaoc Powerplants.

The FSFES analyzes the environmental consequences of the modifications, and presents comments and responses arising from hearings and a 90-day public review of the Draft Supplement to the FES.

Date: March 24, 1989.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89–7396 Filed 3–28–89; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Proposed Reopening of Manzanita Lake Area for Day Use, Lassen Volcanic National Park, California; Intent To Prepare a Supplemental Environmental Statement

Summary

In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, the National Park Service, Lassen Volcanic National Park, is preparing a supplemental environmental impact statement, to the 1981 Final Environmental Statement, for the General Management Plan, to assess the impacts of reopening the Manzanita Lake area for day use purposes. The proposal, based upon a reevaluation of geologic hazards at Manzanita Lake, would amend the General Management Plan by allowing reopening of the remaining historic structures and trail and picnic facilities to day use. Other alternatives to be assessed are No Action, which would keep the area closed as provided in the 1981 General Management Plan, and the option of leaving the remaining historic structures intact but not used with the remainder of the area open to day use as described in the proposal.

The responsible official is Stanley Albright, Regional Director, Western Regional Office. The draft supplemental environmental statement is expected to be completed and available for public review by May 1989, and the final supplemental environmental impact Statement and Record of Decision expected to be completed by the end of October, 1989. For further information, please contact the Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, CA 96093–0100, telephone number (916) 595–4444.

Date: March 20, 1989.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 7445 Filed 3–28–89; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Land Management

[UT–060–4351–08]

Intent for Plan Amendment; Utah

March 20, 1989.

AGENCY: Bureau of Land Management, Moab.

ACTION: Notice of Intent—Plan Amendment for the Grand Resource Area Resource Management Plan, Grand and San Juan Counties, Utah. This also affects three Wilderness Study Areas (WSA).

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) intends to amend an existing planning document.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the 1985 Grand Resource Area Resource Management Plan which involves portions of Grand and San Juan Counties, Utah. The purpose of the amendment would be to identify existing and potential bighorn sheep habitat and to remove the numerical constraints placed on bighorn sheep which state that wildlife habitat will be managed in support of the estimated current bighorn sheep population, approximately 259 animals.

Congressional and Washington Office direction has changed considerably since completion of the 1985 land use plan. It is necessary to consider an RMP amendment in order to comply with Congressional and Washington Office intent.

This plan will be amended to allow the present bighorn sheep population to continue to increase and expand into suitable habitat through releases and re-establishment, and through the use of other management techniques and practices that will provide habitat conditions which favor the bighorn.

Approximately 186,835 acres of the areas under consideration are within Wilderness Study Areas (WSA) These WSA's are managed under the BLM's Interim Management Policy (IMP) for Lands Under Wilderness Review (1979, revised 1983). The WSAs involved are Westwater Canyon UT–060–118, Desolation Canyon UT–060–068A and Floy Canyon UT–060–068B.

For 30 days from the date of publication of this notice the BLM will accept comments on this proposal. There will also be opportunity for public comment on the final planning decision.

Existing planning documents and information are available at the Grand Resource Area, P.O. Box M, Sand Flats Road, Moab, Utah 84532, phone: (309) 259–8193.

FOR FURTHER INFORMATION: Contact Elmer Duncan, Grand Resource Area Manager.

Date: March 17, 1989.

James M. Parker,

State Director.

[FR Doc. 89–7377 Filed 3–28–89; 8:45 am]

BILLING CODE 4310–DQ–M

[NM–940–09–4214–10; NM NM 77962]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 2,784.66 acres of public land from the operation of the public land laws, including the mining laws but not the mineral leasing laws, and 240.00 acres of federally reserved mineral interests underlying acquired surface estate from the operation of the mining laws for a period of 100 years for protection of the Carlsbad Project, Fort Sumner Dam and Reservoir. This withdrawal will temporarily close the land for up to 2 years from publication of this Notice in the **Federal Register**, until various studies and analyses are made to support a final decision. The land will continue to be managed as a developed reclamation project during the segregation period.

DATE: Comments and requests for a public meeting must be received by June 27, 1989.

ADDRESS: Comments and requests should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico, 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: On March 13, 1989, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 5 N., R. 23 E.,
Sec. 2, lot 4, SW¼SE¼.
T. 4 N., R. 24 E.,
Sec. 2, lots 1, 2, 3, E½SW¼, NW¼SE¼.
T. 5 N., R. 24 E.,
Sec. 17, S½S½;
Sec. 18, NE¼, N½SE¼;
Sec. 20, NW¼, SE¼;
Sec. 21, all;
Sec. 26, N½SW¼;
Sec. 27, NE¼SW¼, S½SW¼SE¼;
Sec. 28, W½NE¼, SE¼NE¼, NW¼;
Sec. 29, N½NE¼, SE¼NE¼;
Sec. 33, NE¼, E½SE¼;
Sec. 34, E½NE¼, W½, SE¼SE¼;
Sec. 35, W½NW¼, SE¼NW¼.

The area described aggregates 3,024.66 acres in Guadalupe and DeBaca Counties.

The purpose of the proposed withdrawal is to protect the Carlsbad Project, Fort Sumner Dam and Reservoir, an existing Bureau of Reclamation project. The land will continue to be managed as a developed reclamation project during the segregation period.

For a period of 90 days from the date of publication of this Notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this Notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this Notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those compatible with project use, as determined by the Bureau of Reclamation.

Dated: March 17, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89–7379 Filed 3–28–89; 8:45 am]

BILLING CODE 4310–FB–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–410 (Final)]

Light-Walled Rectangular Pipes and Tubes From Taiwan; Import Investigation Determination

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured [3] or threatened with material injury [4] by reason of imports from Taiwan of light-walled rectangular pipes and tubes,[5] provided for in subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective Novembver 21, 1988, following a preliminary determination by the Department of Commerce that imports of light-walled rectangular pipes and tubes from Taiwan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 14, 1988 (53 FR 50303). The hearing was held in Washington, DC, on February 8, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 20, 1989. The views of the Commission are contained in USITC Publication 2169 (March 1989), entitled Light-Walled Rectangular Pipes and Tubes from Taiwan: Determination of the Commission in Investigation No. 731–TA–410 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 23, 1989.

[FR Doc. 89–7420 Filed 3–28–89; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(h) of the Commisison's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioners Lodwick and Rohr dissenting.

[3] Acting Chairman Brunsdale and Commissioner Cass determine that an industry in the United States is materially injured by reason of the subject imports.

[4] Commissioners Eckes and Newquist determine that an industry in the United States is threatened with material injury by reason of the subject imports. They further determine that material injury by reason of the subject imports would not have been found but for any suspension of liquidation of entries of the merchandise.

[5] For purposes of these investigations, the term light-walled rectangular pipes and tubes covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness of less than 0.156 inch (4 millimeters). Light-walled rectangular pipes and tubes were previously provided for in item 610.49 of the Tariff Schedules of the United States and were reported for statistical purposes under item 610.4928 of the *Tariff Schedules of the United States Annotated.*

[Investigation No. 731–TA–389 (Final)]

3.5 Inch Microdisks and Media Therefor From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Japan of 3.5 inch microdisks and media therefor, provided for in subheading 8523.20.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 724.4570 of the Tariff Schedules of the United States), that have been found by the Department of Commerce to be

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)), as amended, 53 FR 33041 (Aug. 29, 1988).

[2] Commissioner Cass dissents. Acting Chairman Brunsdale did not participate in the consideration or determination of this case.

sold in the United States at less than fair value (LTFV).[3]

Background

The Commission instituted this investigation effective September 29, 1988, following a preliminary determination by the Department of Commerce that imports of 3.5 inch microdisks and media therefor from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 19, 1988 (53 FR 38045). The hearing was held in Washington, DC, on February 9, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 22, 1989. The views of the Commission are contained in USITC Publication 2170 (March 1989), entitled "3.5 inch microdisks and media therefor from Japan: Determination of the Commission in Investigation No. 731-TA-389 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 23, 1989.

[FR Doc. 89-7468 Filed 3-28-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-281]

Certain Recombinant Erythropoietin; Order

Upon consideration of the motion of respondents Chugai Pharmaceutical Co., Ltd. and Chugai U.S.A., Inc., for an order preventing further dissemination of information released pursuant to Order No. 30, and the other submissions in support of and in opposition to such an order, and pending further consideration of the issues raised, it is hereby *Ordered:*

1. Those portions of Order No. 30 that declassify, and do not stay the release of, finding of fact or parts of findings of fact contained in the administrative law judge's initial determination of January 10, 1989, are stayed. Those portions of Order No. 30 that either deny declassification of findings of fact, or stay their release, are not stayed.

2. Parties to this investigation (including intervenor Upjohn Company) and their counsel shall not disclose or otherwise disseminate information released pursuant to Order No. 30, except to persons authorized to receive such information under the terms of the Commission's protective order issued in this investigation.

3. The request of Chugai Pharmaceutical Co., Ltd., and Chugai U.S.A., Inc., for leave to file a reply to complainant's memorandum in opposition to respondents' motion for a temporary restraining order is granted.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 24, 1989

[FR Doc. 89-7469 Filed 3-28-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No 337-TA-286]

Certain Track Lighting System Components, Including Plugboxes; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. 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 consent order agreement: Progress Lighting, Inc.

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, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on.

Copies of the initial determination, the consent order 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, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

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 of the Commission, 500 E Street SW., 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 request 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 202-252-1805

By order of the Commission:
Issued: March 23, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-7466 Filed 3-28-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-286]

Certain Track Lighting System Components, Including Plugboxes; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. 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 consent order agreement: Marvin Electric Manufacturing, Co.

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, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on

Copies of the initial determination, the consent order agreement, and all other

[3] 3.5 inch microdisks and media therefor are defined by Commerce as unrecorded flexible magnetic disk recording media, with or without protective covering, for ultimate use in recording and storing data with a 32.5" floppy disk drive.

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, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

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, 500 E Street SW., 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 202–252–1805.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 23, 1989.

[FR Doc. 89–7467 Filed 3–28–89; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Houston David Hughes, D.D.S. Revocation of Registration

On June 24, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Houston David Hughes, D.D.S., 1310 S. Range, P.O. Box 1094, Denham Springs, Louisiana 70726, proposing to revoke his DEA Certificate of Registration AH3367542, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Dr. Hughes' lack of authorization to handle controlled substances in the State of Louisiana. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Hughes by registered mail. DEA received the return receipt which indicated that the Order to Show Cause was received on July 7, 1988. More than thirty days have passed since Dr. Hughes received the Order to Show Cause and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(d), Dr. Hughes is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that the Louisiana State Board of Dentistry suspended Dr. Hughes' license to practice dentistry for a period of five years effective April 18, 1987. This suspension was based on seven violations of Title 37 of the Louisiana Revised Statutes, which the Board found Dr. Hughes committed by permitting unlicensed dental assistants under his direction to perform duties authorized to be performed only by a licensed dentist. In addition to the five year suspension, Dr. Hughes was fined a total of $7,000 and required to reimburse the State Board for all costs, fees, expenses, attorney fees, and all other charges for the proceeding as provided by law.

Pursuant to the suspension of Dr. Hughes' license to practice dentistry, he is not currently authorized to handle controlled substances in the State of Louisiana. The Drug Enforcement Administration does not have the authority to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. The Administrator has consistently so held. *Fazal Ahmad, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); and, *Meyer Liebowitz, M.D.*, 51 FR 11654 (1986).

The Administrator also finds that on April 30, 1987, Dr. Hughes ordered and received a ten pack of the Schedule II controlled substance Sublimaze 2ml. ampoules. Sublimaze can produce drug dependence of the morphine type and therefore has a very high potential for being abused. The order for Sublimaze was requested and filled after the Board's suspension of Dr. Hughes' dental license.

The Administrator concludes that there is a lawful basis for the revocation of Dr. Hughes' DEA Certificate of Registration. Due to Dr. Hughes' lack of authorization to handle controlled substances in Louisiana, the registration must be revoked, and any pending applications denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AH3367542, previously issued to Houston David Hughes, D.D.S., be, and it hereby is, revoked, and that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective immediately.

John C. Lawn,

Administrator.

Dated: March 22, 1989.

[FR Doc. 89–7449 Filed 3–28–89; 8:45 am]

BILLING CODE 4410–09–M

Sabastan Jye Kenight, d/b/a Marco Medical Research Institute; Denial of Applications

On August 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Sabastan Jye Kenight d/b/a Marco Medical Research Institute, 567 Fox Hills Road North, Bloomfield Township, Michigan 48013, proposing to deny his applications executed on March 19, 1987, and February 11, 1988, for registration as a teaching institution and research institution, respectively, under 21 U.S.C. 823(f). The statutory predicate for the issuance of the Order to Show Cause was Mr. Kenight's lack of authorization to handle controlled substances in the State of Michigan.

A registered mail receipt indicates that the Order to Show Cause was received by Mr. Kenight on August 31, 1988. More than thirty days have passed since the Order to Show Cause was received by Mr. Kenight and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(d), Sabastan Jye Kenight is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Mr. Kenight filed two applications for DEA registration for the Marco Medical Research Institute, one as a research institution and one as a teaching institution. On August 20, 1987, Mr. Kenight called the Detroit DEA Diversion Office to request order forms for Schedule II controlled substances. After being informed that only DEA registrants could receive Schedule II

order forms, Mr. Kenight stated that he was tired of waiting for a DEA registration and that he was going to procure controlled substances without such registration. He also indicated that his colleagues at the Marco Medical Research Institute were already procuring controlled substances without being properly registered with DEA.

Based on this telephone call, DEA Investigators interviewed Mr. Kenight at his residence on August 21, 1987. During the interview, Mr. Kenight spoke in vague terms about his research, mentioning electroplating, saccharin-based substances, DNA and AIDS research. Mr. Kenight could not name a single controlled substance he might need for his research. He was also ambiguous about where he intended to acquire space for a laboratory. No lease or purchase arrangements had been made. Mr. Kenight stated that he would begin his research in the basement of his townhouse. The basement consisted of three rooms, one of which served as the living quarters for a member of Mr. Kenight's household. Mr. Kenight informed the investigators that he would store chemicals in empty plastic orange juice jugs which were kept in the basement. The basement also contained a furnace and laundry facilities.

Mr. Kenight told investigators that in the past he had been Vice President of Research and Development at another research firm. When officers of that firm were contacted, they reported that Mr. Kenight had no connection whatsoever with their firm. The officers also stated that despite Mr. Kenight's claimed educational credentials, he possessed little knowledge beyond rudimentary knowledge of chemistry or engineering.

During the interview, Mr. Kenight showed DEA investigators copies of educational degrees from various institutions. Mr. Kenight submitted similar documents to the Michigan Board of Pharmacy in order to obtain a Michigan State Controlled Substances registration. Mr. Kenight submitted two "student academic records" purportedly issued by DePaul University. One record listed a Bachelor of Science degree in Mechanical, Chemical and Electrical Engineering earned in August 1983. The second document listed a Master of Science Degree in Engineering Science allegedly awarded three months later. Verification by DEA Investigators disclosed that Mr. Kenight never attended DePaul University.

The Administrator finds that Mr. Kenight's applications lack any hint of scientific merit. He has been less than forthcoming with details regarding his plans for "research," and has misrepresented his educational and work background on numerous occasions. In reviewing the investigative file, the Administrator finds that there is no information to suggest that Mr. Kenight is capable of, or even intends to, conduct serious scientific research. The proposed "research," which Mr. Kenight proposed to conduct at his residence, could not be accomplished without appropriate equipment and training. Mr. Kenight has failed to provide any information which would indicate that he has the training and facilities to carry our research. The Administrator finds that approval of Mr. Kenight's applications for registration would be wholly inconsistent with the public interest.

The Administrator further finds that Mr. Kenight is not currently authorized to handle controlled substances in the State of Michigan. The Administrator and his predecessors have consistently held that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See, *Edward L. McIver, M.D.*, 53 FR 16477 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 411 68 (1986); and cases cited therein.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Mr. Kenight's applications for a DEA Certificate of Registration, executed on March 19, 1987, and February 11, 1988, be, and they hereby are, denied. It is further ordered that any other pending applications for registration, executed by Mr. Kenight, be, and they hereby are, denied. This order is effective immediately.

John C. Lawn,

Administrator.

Dated: March 24, 1989.

[FR Doc. 89-7450 Filed 3-28-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-79]

S. Reses Apothecary; Revocation of Registration

On August 15, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to S. Reses Apothecary, (Respondent), of 6522 Ventnor Avenue, Ventnor, New Jersey 08408, proposing to revoke the pharmacy's DEA Certificate of Registration AS1465485, and to deny any pending applications for renewal on the ground that the pharmacy's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a) (4).

Respondent, through counsel, timely filed a request for hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of the Administrative Law Judge Francis L. Young. On October 25, 1988, Judge Young issued an Order for Prehearing Statements requiring the Government to file its prehearing statement on or before November 28, 1988, and Respondent to file its prehearing statement on or before January 3, 1989. The order also continued the following caveat:

> Respondent is cautioned that failure timely to file a prehearing statement as directed . . . may be considered a waiver of hearing and an implied revocation of a request for hearing.

The Government filed its prehearing statement in a timely manner. Respondent's counsel did not file any prehearing statement, nor did she make a request for extension of time for filing Respondent's prehearing statement. Based upon Respondent's failure to file a prehearing statement in accordance with the Administrative Law Judge's earlier order, on February 21, 1989, the Government filed a motion to terminate proceedings before the Administrative Law Judge, so that the matter could be presented to the Administrator for a final determination on the record. That motion was granted and the proceedings were terminated on February 24, 1989. The Administrator concludes that Respondent's failure to file a prehearing statement constitutes an implied revocation of the earlier request for hearing, and enters this final order based upon information contained in the DEA investigative file and the record as it now appears. 21 CFR 1301.54(e).

The Administrator finds that on November 20, 1986, in the New Jersey Superior Court, in and for Atlantic County, William Strohl, the owner and registered pharmacist of S. Reses Apothecary, was indicted on six counts of Medicaid fraud; four counts of unlawful distribution of a Schedule IV controlled substance; one count of acquiring possession of controlled substances by misrepresentation, fraud, deception and subterfuge; two counts of distribution of controlled substances not authorized by the pharmacist's registration; one count of failing to maintain required controlled substance records; one count of conspiracy to commit several crimes, including

unlawful distribution and possession of controlled substances; three counts of hindering apprehension and prosecution; two counts of swearing to false information; and one count of criminal coercion. No final disposition has been made in the criminal case against Mr. Strohl.

Mr. Strohl's indictment resulted from a lengthy investigation conducted by investigators from the New Jersey Department of Law and Public Safety in 1984. The investigation revealed that, prior to owning S. Reses Apothecary, Mr. Strohl was a co-owner of Medco Drug in Atlantic City, New Jersey in 1981. While working at Medco Drug, Mr. Strohl filled numerous prescriptions for Quaalude and generic methaqualone issued from the Atlantic City Stress Center. Upon taking over S. Reses Apothecary in 1982, Mr. Strohl entered into an arrangement with the clinic's owner in which he would continue to fill the clinic's methaqualone prescriptions provided that the clinic provide him with additional prescriptions issued in the names of patients who did not return to the clinic. These prescriptions were used by Mr. Strohl to cover his own use of the drugs. The clinic subsequently was investigated and found to have issued prescriptions for other than legitimate medical purposes. In 1984, methaqalone was placed in Schedule I of the Controlled Substances Act and could no longer be prescribed or dispensed for medical purposes.

The investigation also revealed that Mr. Strohl filled several controlled substance prescriptions in the names of boarders at the Ocean View Boarding Home, a boarding house owned and operated by Joseph Fromme. Mr. Fromme is a co-defendant in the criminal indictment mentioned previously. Mr. Fromme obtained prescriptions from a physician who visited the boarding house and called them into S. Reses Apothecary for filling. Messrs. Fromme and Strohl made an arrangment whereby Mr. Strohl would fill the prescriptions and deliver the drugs to Mr. Fromme's residence, rather than to the boarding house. Mr. Fromme would then return a portion of the dispensed drugs to Mr. Strohl for his personal use. Mr. Strohl also received Medicaid payments for dispensing the drugs, even when the drugs were not received by the listed patient.

In addition, at other times when Mr. Strohl would receive controlled substance prescriptions for filling for individuals he knew were abusing the drugs, he would advise them that he could only fill the prescriptions for half the quantity prescribed. Mr. Strohl would count out the full amount of the medication, but only give the patient one-half the quantity. The remaining amount would be retained by Mr. Strohl for his personal use. Further, in the event that filled prescriptions were not picked up by patients, Mr. Strohl would not return the unused drugs to stock, but instead, would retain them for his own personal use. At times, Mr. Strohl would give controlled substances from his personal stock to friends and employees without being presented with valid prescriptions.

Also, Mr. Strohl ordered pharmaceutical cocaine and procaine through the pharmacy for his personal use. He was even observed by an employee using the cocaine in the pharmacy.

In 1984, investigators from the New Jersey Department of Health conducted an investigation and controlled substance accountability audit at S. Reses Apothecary. The investigation revealed numerous controlled substance recordkeeping violations, including: failure to take a biennial inventory of the pharmacy's controlled Substance stock; dispensing Schedule II and V controlled substances, although the pharmacy was not registered in those schedules; failure to maintain controlled substance purchase records; failure to include all required information on prescriptions, including patient's address, practitioner's name and practitioner's DEA number; failure to receive written prescriptions for Schedule II emergency call-in prescriptions; filling prescriptions bearing invalid DEA numbers; using Schedule II order forms of a former owner; filling prescriptions without indicating strengths of the drugs prescribed. In addition, investigators found an opened bottle of cocaine flakes in the pharmacy, although there were no prescriptions for cocaine on file. A later analaysis of the contents of the bottle revealed a mixture of cocaine and procaine.

The controlled substance audit also revealed discrepancies. Since Mr. Strohl had not performed a biennial inventory, investigators were required to use an initial inventory of zero for each of the controlled substances included in the audit. The audit revealed excessive, unexplained shortages of Placidyl, Talwin, Tussionex, Doriden, and Tylox.

In determining whether the pharmacy's continued registration is inconsistent with the public interest, the Administrator considers the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In this case, the second, fourth and fifth factors are relevant. Mr. Strohl routinely dispensed controlled substances for other than legitimate medical purposes and outside the scope of this professional practice. He failed to comply with controlled substance recordkeeping requirements. He could not justify excessive shortages of controlled substances. He also personally abused controlled substances or dispensed them to friends and employees. In addition, he filed false claims for and received payments under the Medicaid program. Nothing positive can be said for the manner in which Mr. Strohl has handled controlled substances. Clearly, Mr. Strohl has used his DEA registration only for his personal benefit and convenience rather than to legitimately dispense controlled substances to persons who need them. He is responsible for the diversion and abuse of large quantities of controlled subtances. Thus, the pharmacy's continued registration is contrary to the public interest and must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 832 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AS1465485, previously issued to S. Reses Apothecary, be, and it hereby is, revoked. The Administrator further orders that any pending application for renewal of the pharmacy's registration be, and it hereby is, denied.

This order is effective April 28, 1989.

Dated: March 22, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-7451 Filed 3-28-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Public Information Collection Requirement Submitted to OMB for Review.

ACTION: Notice.

The Department of Labor has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable Control Number: Summary Annual Report; No Form; and OMB control number 1210–0040.

Type of Request: Expedited Submission—approval date requested April 13, 1989.

Average Burden Hours/Per Response: 0.027

Frequency of Response: annually; other (triennially)

Number of Respondents: 962,000

Annual Burden Hours: 5,045,075

Needs and Uses: The Employee Retirement Income Security Act, (ERISA) requires that a Summary Annual Report (SAR) be provided to plan participants and beneficiaries to ensure that they are informed of the current financial operations and conditions of their plan in an accurate and timely manner. SARs provide participants and beneficiaries with certain basic financial information as a means of monitoring a plan's financial operations and performance, thereby supplementing the Department's enforcement efforts.

Affected Public: Business or other for profit; non-profit institutions; small businesses or organizations

Respondents Obligations: Mandatory.

Requests for Which Paperwork Reduction Act Approval is Being Sought: Section 2520.104b–10 Summary Annual Report

(a) *Obligation to furnish.* Except as otherwise provided in paragraphs (b) and (g) of this section, the administrator of any employee benefit plan shall furnish annually to each participant of such plan and to each beneficiary receiving benefits under such plan (other than beneficiaries under a welfare plan) a summary annual report conforming to the requirements of this section. Such furnishing of the summary annual report shall take place in accordance with the requirements of section 2520.104b–1 of this part.

(b) *Plans filing Form 5500–R.* In the case of an employee benefit plan subject to section 2520.104–41 (concerning simplified annual reporting for plans with fewer than 100 participants), the administrator, in lieu of furnishing a summary annual report for the year in which a Form 5500–R is filed, shall, in accordance with section 2520.104b–1, furnish each participant of such plan and each beneficiary receiving benefits under such plan (other than beneficiaries under a welfare plan) either—

(1) A copy of the Form 5500–R filed on behalf of the plan, and the notice described in paragraph (b)(3); or

(2)(i) A written notice stating that in lieu of a summary annual report a copy of the Form 5500–R filed on behalf of the plan will be furnished free of charge upon receipt of a written request. The notice shall contain the name and address of the plan administrator to whom such requests may be directed. The administrator, upon receipt of such a written request from a participant or beneficiary, shall furnish, free of charge and in accordance with section 2520.104b–1, a copy of the form 5500–R filed on behalf of the plan and the notice described in paragraph (b)(3). Such furnishing shall take place within thirty days following receipt of a request.

(ii) The administrator of an employee benefit plan will be deemed to have furnished, in accordance with § 2520.104b–1, the written notice described in paragraph (b)(2)(i) of this section to participants, if the administrator posts the notice for a minimum of thirty days at worksite locations, and in a manner reasonably calculated to ensure disclosure to plan participants. Participants who have retired or separated from service with vested benefits under a pension plan, beneficiaries receiving benefits under a pension plan, and other participants who could not reasonably be expected to visit such worksite locations during the period when the notice is posted must be furnished the notice pursuant to paragraph (b)(2)(i) of this section.

(iii) Nothing in paragraph (b)(2)(ii) of this section shall preclude an administrator from posting a copy of the Form 5500–R filed on behalf of the plan with the required notice; however, such a posting shall not relieve an administrator from the requirement to furnish a copy of the Form free of charge upon receipt of a written request from any participant or beneficiary.

(3) Any Form 5500–R furnished in accordance with paragraphs (b)(1) or (b)(2)(i), of this section, shall include the following notice:

Disclosure of Plan Information Under ERISA

Attached is a copy of the most recent Registration Statement (Form 5500–R) for the employee benefit plan of which you are a participant or beneficiary (see item 4(a) on Form 5500–R). The Registration Statement contains information about the plan and has been filed with the Internal Revenue Service under the Employee Retirement Income Security Act of 1974 (ERISA).

This copy of Form 5500–R is being furnished to you in compliance with Department of Labor regulations which require it to be furnished to you free of charge either automatically or upon written request in lieu of the summary annual report for plan years for which Form 5500–R has been filed.

You also have the right to receive from the plan administrator (see item 1(a) or 2(a) on Form 5500–R), on request, a copy of Schedule A (Insurance Information) and Schedule B (Actuarial Information), which were filed with the attached Form 5500–R. The charge to cover copying costs will be ($) for this/these Schedule(s), or ($) per page for any part thereof.

You also have the legally protected right to examine these documents at the main office of the plan (address, if different from Form 5500–R, item 1(a) or 2(a)), (at another location where these documents are available for examination), and at the U.S. Department of Labor in Washington, DC, or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the department should be addressed to: Public Disclosure Room, N–4677, Pension and Welfare Benefit Programs, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Note: Inapplicable portions of this notice may be omitted.

(c) *When to furnish.* Except as otherwise provided in this paragraph (c) of this section the summary annual report required by paragraph (a) of this section, and Form 5500–R or the notice of its availability on request required under paragraph (b) of this section, shall be furnished in accordance with the respective requirements of those paragraphs within nine months after the close of the plan year.

(1) In the case of a welfare plan described in § 2520.104–43 of this part, such furnishing shall take place within 9 months after the close of the fiscal year of the trust or other entity which files the annual report under § 2520.104a–6 of this part.

(2) When an extension of time in which to file an annual report has been granted by the Internal Revenue Service, such furnishing shall take place within 2 months after the close of the period for which the extension was granted.

(d) *Contents, Style and Format.* Except as otherwise provided in this paragraph (d), the summary annual report furnished to participants and beneficiaries of an employee pension benefit plan pursuant to this section shall consist of a completed copy of the form prescribed in paragraph (d)(3) of this section, and the summary annual report furnished to participants and beneficiaries of an employee welfare benefit plan pursuant to this section shall consist of a completed copy of the form prescribed in paragraph (d)(4) of this section. The information used to complete the form shall be based upon information contained in the most recent annual report of the plan which is required to be filed in accordance with section 104(a)(1) of the Act.

(1) Any portion of the forms set forth in this paragraph (d) which is not applicable to the plan to which the summary annual report relates, or which would require information which is not required to be reported on the annual report of that plan, may be omitted.

(2) Where the plan administrator determines that additional explanation of any information furnished pursuant to this paragraph (d) is necessary to fairly summarize the annual report, such explanation shall be set forth following the completed form required by this paragraph (d) and shall be headed, "Additional Explanation."

(3) Form for Summary Annual Report Relating to Pension Plans

Summary Annual Report for (Name of Plan)

This is a summary of the annual report for (name of plan and EIN) for (period covered by this report). The annual report has been filed with the Internal Revenue Service, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Basic Financial Statement

Benefits under the plan are provided by (indicate funding arrangements). Plan expenses were ($). These expenses included ($) in administrative expenses and ($) in benefits paid to participants and beneficiaries, and ($) in other expenses. A total of ( ) persons were participants in or beneficiaries of the plan at the end of the plan year, although not all of these persons had yet earned the right to receive benefits.

[If the plan is funded other than solely by allocated insurance contracts:]

The value of plan assets, after subtracting liabilities of the plan, was ($) as of (the end of the plan year), compared to ($) as of (the beginning of the plan year). During the plan year the plan experienced an (increase) (decrease) in its net assets of ($). This (increase) (decrease) includes unrealized appreciation or depreciation in the value of plan assets; that is, the difference between the value of the plan's assets at the end of the year and the value of the assets at the beginning of the year or the cost of assets acquired during the year. The plan had total income of ($), including employer contributions of ($), employee contributions of ($), (gains) (losses) of ($), from the sale of assets, and earnings from investments of ($). [For plans filing form 5500K, omit separate entries for employer contributions and employee contributions and insert instead "contributions by the employer and employees of ($)"].

[If any funds are used to purchase allocated insurance contracts:]

The plan has (a) contract(s) with (name of insurance carrier(s)) which allocates(s) funds toward state whether individual policies, group deferred annuities or others). The total premiums paid for the plan year ending (date) were ($).

Minimum Funding Standards

[If the plan is a defined benefit plan:]

An actuary's statement shows that (enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA) (not enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA. The amount of the deficit was $).

[If the plan is a defined contribution plan covered by funding requirements:]

(Enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA) (not enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA. The amount of the deficit was $).

Your Rights to Additional Information

You have the right to receive a copy of the full annual report, or any part thereof, on request. The items listed below are included in that report: [*Note*—list only those items which are actually included in the latest annual report]

1. An accountant's report;
2. Assets held for investment;
3. Fiduciary information, including transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);
4. Loans or other obligations in default;
5. Leases in default;
6. Transactions in excess of 3 percent of plan assets;
7. Insurance information including sales commissions paid by insurance carriers; and
8. Actuarial information regarding the funding of the plan. To obtain a copy of the full annual report, or any part thereof, write or call the office of (name), who is (state title: e.g., the plan administrator), (business address and telephone number). The charge to cover copying costs will be ($) for the full annual report, or ($) per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or a statement of income and expenses of the plan and accompanying notes, or both. If you request a copy of the full annual report from the plan administrator, these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

You also have the legally protected right to examine the annual report at the main office of the plan (address), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, N4677, Pension and Welfare Benefit Programs, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(4) Form for Summary Annual Report Relating to Welfare Plans

Summary Annual Report for (Name of Plan)

This is a summary of the annual report of the (name of plan, EIN and type of welfare plan) for (period covered by this report). The annual report has been filed with the Internal Revenue Service, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

[If any benefits under the plan are provided on an uninsured basis:]

(Name of sponsor) has committed itself to pay (all, certain) (state type of) claims incurred under the terms of the plan.

[If any of the funds are used to purchase insurance contracts:]

Insurance Information

The plan has (a) contract(s) with (name of insurance carrier(s)) to pay (all, certain) (state type of) claims incurred under the terms of the plan. The total premiums paid for the plan year ending (date) were ($).

[If applicable add:]

Because (it is a)(they are) so called "experience-rated" contract(s), the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending (date), the premiums paid under such "experience-rated" contract(s) were($) and the total of all benefit claims paid under the(se) experience-rated contract(s) during the plan year was ($).

[If any funds of the plan are held in trust of in separately maintained fund:]

Basic Financial Statement

The value of the plan assets, after subtracting liabilities of the plan, was ($) as of (the end of plan year), compared to ($) as of (the beginning of plan year). During the plan year the plan experienced an (increase)(decrease) in its net assets of ($). This (increase)(decrease) includes unrealized appreciation and depreciation in the value of plan assets; that is, the difference between the value of the plan's assets at the end of the year and the value of the assets at the beginning of the year or the cost of assets acquired during the year. During the plan year, the plan had total income of ($) including employer contributions of ($), employee contributions of ($), realized (gains)(losses) of ($) from the sale of assets, and earnings from investments of ($). Plan expenses were ($). These expenses included ($) in administrative expenses, ($) in benefits paid to participants and beneficiaries, and ($) in other expenses.

Your Rights to Additional Information

You have the right to receive a copy of the full annual report, or any part thereof, on request. The items listed below are included in that report: [Note—list only those items which are actually included in the latest annual report].

1. An accountant's report;
2. Assets held for investment;
3. Fiduciary information, including transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);
4. Loans or other obligations in default;
5. Leases in default;
6. Transactions in excess of 3 percent of plan assets; and
7. Insurance information including sales commissions paid by insurance carriers.

To obtain a copy of the full annual report, or any part thereof, write or call the office of (name), who is (state title: e.g., the plan administrator),(business address and telephone number). The charge to cover copying costs will be ($) for the full annual report, or ($) per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or a statement of income and expenses of the plan and accompanying notes, or both. If you request a copy of the full annual report from the plan administrator, these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

You also have the legally protected right to examine the annual report at the main office of the plan (address), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, DC or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to Public Disclosure Room, N4677, Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(e) *Foreign Languages.* In the case of either—

(1) A plan which covers fewer than 100 participants at the beginning of a plan year in which 25 percent or more of all plan participants are literate only in the same non-English language; or

(2) A plan which covers 100 or more participants in which 500 or more participants or 10 percent or more of all plan participants, whichever is less, are literate only in the same non-English language—

The plan administrator for such plan shall provide these participants with an English-language summary annual report which prominently displays a notice, in the non-English language common to these participants, offering them assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these participants. The notice offering assistance shall clearly set forth any procedures participants must follow to obtain such assistance. Plans furnishing an explanatory notice accompanying Form 5500–R pursuant to subparagraph (b)(1) of this section or the notice of the availability of the Form 5500–R pursuant to subparagraph (b)(2) of this section shall also provide a notice in such non-English language offering such assistance.

(f) *Furnishing of additional documents to participants and beneficiaries.* A plan administrator shall promptly comply with any request by a participant or beneficiary for additional documents made in accordance with the procedures or rights described in paragraphs (b)(3) and (d) of this section.

(g) *Exemptions.* Notwithstanding the provisions of this section, a summary annual report is not required to be furnished with respect to the following:

(1) A totally unfunded welfare plan described in 29 CFR 2520.104–44(b)(i);

(2) A welfare plan which meets the requirements of 29 CFR 2520.104–20(b);

(3) An apprenticeship or other training plan which meets the requirements of 29 CFR 2520.104–22;

(4) A pension plan for selected employees which meets the requirements of 29 CFR 2520.104–23;

(5) A welfare plan for selected employees which meets the requirements of 29 CFR 2520.104–24;

(6) A day care center referred to in 29 CFR 2520.104–25;

(7) A dues financed welfare plan which meets the requirements of 29 CFR 2520.104–26; and

(8) A dues financed pension plan which meets the requirements of 29 CFR 2520.104–27.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the recordkeeping/reporting requirements for this rule should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 (Telephone (202) 523–6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 3001, Washington, DC 20503 (Telephone (202) 395–6880). The comments should be received by April 13, 1989.

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Paul E. Larson,

Departmental Clearance Officer.

Supporting Statement

Subject: Summary Annual Report.

A. Justification

1. Statutory Authority for Information Collection

Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) and 29 CFR § 2520.104b–10 require, with certain exceptions, administrators of employee benefit plans to furnish annually to each plan participant and beneficiary a Summary Annual Report (SAR) which fairly summarizes the information included in the annual report.

The regulation prescribes the format for the SAR (§ 2520.104b–10). The format is intended to present relevant plan information in a form understandable to plan participants. To ease the administrative burdens of preparing a SAR, the prescribed formats (one for pension plans and one for welfare plans) were designed so that information from specific line items of the plan's annual report (Form 5500) can be transcribed directly to the SAR. A guide which correlates the SAR items to the annual report line items was included with the Department's regulation.

Within 9 months after the close of the plan year, plan administrators are required to furnish a copy of the SAR annually to each participant and beneficiary, by personal delivery, by mail, or by inclusion of the SAR as a special insert in a periodical distributed to all employees (see, e.g., 29 CFR 2520.104b–10(c) and 2520.104b–1(b)). The distribution requirements applicable to disclosures under Title I of ERISA are contained in 29 CFR § 2520.104b–1.

2. Purpose of the Information Collection

ERISA requires that the SAR be provided to plan participants and beneficiaries to ensure that they are informed of the current financial operations and conditions of their plan in an accurate and timely manner. SARs provide participants and beneficiaries with certain basic financial information as a means of monitoring a plan's financial operations and performance, thereby supplementing the Department's enforcement efforts.

3. Use of Improved Information Technology

The use of improved technology is not applicable.

4. Efforts to Identify Duplication

There is no duplication of the disclosure information furnished by the SAR with information provided under other Federal or state laws.

5. Similar Information

The SAR contains selected information from the comprehensive financial data contained in the Form 5500. The Form 5500 is not sent to all participants and beneficiaries, although a copy must be provided upon request.

6. Small Business Burden

For purposes of information collection, small entities are defined as employee benefit plans covering fewer than 100 persons (i.e., "small plans"). While some larger employers have small plans (e.g., different plans at each plant), and some small employers contribute to large multiemployer plans, most small plans are maintained by small businesses.

In 1987 there were approximately 962,000 plans which were subject to the SAR requirements. Of these, approximately 855,000 were small plans. A registration-type statement (Form 5500–R) must be filed in those years for which a Form 5500–C is not filed. Because the Form 5500–R does not contain the type of information contemplated to be disclosed in an SAR, small plans are permitted, for years in which the Form 5500–R is filed, to furnish participants and beneficiaries either: (1) a copy of the Form 5500–R with a notice explaining that the form supplants the SAR for that year and that participants may request copies of any schedules which accompanied the Form 5500–R filing; or (2) a notice that a copy of the Form 5500–R may be obtained free of charge upon request.

Plan administrators may satisfy the requirement to furnish the notice apprising participants of the availability of the Form 5500–R by posting the notice, with or without a copy of the Form, at worksite locations for a minimum of thirty days. However, individual notices must be furnished to participants who have retired or separated from service with vested pension benefits, beneficiaries receiving benefits under a pension plan, and any other participant who could not reasonably be expected to visit worksite locations during the posting period.

7. Effect of Less Frequent Collection

The SAR is distributed to plan participants and beneficiaries. Copies are not filed with Federal government; therefore, this section does not apply.

8. Special Circumstances

The paperwork requirement under this regulation is consistent with 5 CFR 1320.6.

9. Consultation With Outside Agencies and Individuals

In 1982, when PWBA amended the SAR requirements to permit the posting of the Form 5500–R, public comments were solicited. These comments generally supported the changes. All comments received are a matter of public record and retained on file by PWBA.

10. Confidentiality

Since the SAR is provided to plan participants and is not filed with the Federal government, confidentiality is not an issue.

11. Questions of a Sensitive Nature

No information of a sensitive nature is required to be provided by employers to individuals under this paperwork requirement.

12. Annual Cost to the Federal Government and Respondents

The SAR is provided only to participants and beneficiaries and therefore no costs to the Federal Government are involved.

Plan administrators incur costs in preparing and mailing SARs to participants and beneficiaries. In 1987 there were approximately 962,000 pension and welfare benefit plans, covering an estimated 192,000,000 participants, subject to the SAR requirements.

Approximately 855,000 of these plans, covering an estimated 9,200,000 participants, were small plans. Approximately 107,000 plans, covering an estimated 182,800,000 participants, were large plans.

Based on the assumptions and estimates in Attachment 1, the estimated cost of complying with current SAR requirements to affected plans is approximately $73 million annually.

13. Information Collection Burden

Burden hour estimates include both the time required to prepare the SAR and the time required to distribute the SAR to participants and beneficiaries. In addition, in calculating the burden, a distinction was made between the hours incurred by large and small plans

preparing SARs, and hours incurred by small plans filing Form 5500–R annual reports which may be furnished in lieu of the SAR under appropriate circumstances.

The SAR imposes an annual paperwork burden of 5,045,075 hours. Of this 4,623,500 hours (approximately 92%) were incurred by large plans, and the remaining 421,575 hours were incurred by small plans. Attachment I provides a more detailed breakdown of burden hours and the basis for the estimates.

14. Reason for Change in Burden

The increase in burden by 207 hours reflects the correction of an arithmetical error in the appendix to the previous submission.

15. Collection of Information for Statistical Use

The SAR is a disclosure requirement, not a collection of information for statistical use by the Federal government. Statistical methods are not employed.

Attachment to SF 83 Supporting Statement—Assumptions and Data on SAR Costs and Burden Hours

1. Preparation Costs and Burden Hour Estimates

The cost and hours attributable to the preparation of the SAR are estimated to be approximately the same for both large and small plans (other than small plans filing the Form 5500–R). It is estimated that on an average it would take each affected plan approximately one-half hour to prepare an SAR in accordance with the prescribed format requirements.

With respect to small plans utilizing the Form 5500–R as the SAR, it is estimated that on an average it would take each such plan one-quarter hour to prepare a notice of availability (i.e., a notice apprising participants that a copy of the Form 5500–R will be provided upon request) and a notice to accompany the Form 5500–R explaining that the Form supplants the SAR for the plan year. For purposes of this analysis it is assumed that all small plans filing the Form 5500–R will elect the least costly method of compliance, i.e., the posting of a notice of availability of the Form 5500–R upon request (with a copy of the form 5500–R) and the furnishing of copy of the Form 5500–R to each inactive participant (e.g., retirees, vested separated participants, beneficiaries and other participants not likely to view the posting).

An average of twenty dollars per hour is used for purposes of this analysis in computing costs attributable to the preparation of the SAR and the notices attendant to the utilization of the Form 5500–R.

Table 1 applies the foregoing assumptions and cost and burden hour estimates to the universe of affected plans.

TABLE 1.—ANNUAL BURDEN HOUR AND COST ESTIMATES RELATING TO PREPARATION OF SARS

	Hours	Costs
Small plans:		
408,100 plans filing SARs		
× ½ hr =	203,050	
× $20 per hr =		$4,061,000
448,900 plans using notice/5500–R		
× ½ hr =	112,225	
× $20 per hr =		2,244,500
Total small plans =	315,275	6,305,500
Large plans:		
107,000 plans preparing SARs		
× ½ hr =		53,500
× $20 per hr =		1,070,000
Total large plans	53,500	1,070,000
Total all plans	368,775	7,375,500

2. Distribution Costs and Burden Hours

Since the costs and burden hours attributable to the annual distribution of the SAR are relative to the number of SARs required to be furnished to participants and beneficiaries each year, the burden hour estimates have been calculated on a per SAR/participant basis.

In accordance with the current SAR regulation, administrators of large plans and small plans (other than small plans filing the form 5500–R) are required to furnish each participant and beneficiary with a copy of the SAR each year. It is estimated that there are approximately 182,800,000 participants and beneficiaries covered by large plans which file the Form 5500 and 3,680,000 participants in small plans which file Form 5500–C, to whom SARs must be furnished annually.

As mentioned above, the SAR requirements for small plans filing the Form 5500–R are substantially different from those applicable to other plans. It is estimated that approximately 60% of the universe of participants in small plans (approximately 5,520,000 participants) will be furnished either a copy of the Form 5500–R or notice of availability, rather than an SAR in any given year. The following assumptions and estimates were made for purposes of determining the impact of the current SAR requirements on small plans filing the Form 5500–R.

First, it was assumed that all small plans filing the Form 5500–R elect to post a notice of availability for purposes of apprising active participants of their right to request and receive a copy of the Form 5500–R. It is estimated that the cost of such postings to plans is negligible; therefore, no distribution cost have been attributed to the posting of the notice of availability.

Second, it is estimated that there are 296,000 individuals covered by plans filing the Form 5500–R who must be automatically provided with the 5500–R. This number includes those individuals that have retired, have separated from service with vested pension benefits, or are beneficiaries receiving pension benefits. It was assumed that, in order to avoid having to distribute both a notice of availability and a copy of the Form 5500–R in response to a request, all small plans filing the Form 5500–R would furnish such inactive participants with copies of the Form 5500–R (and notice explaining that the Form supplants the SAR), rather than the notice of availability.

Third, it is estimated that, in response to the posted notices of availability of the Form 5500–R on request, approximately five percent of the universe of active-present participants in small plans filing the Form 5500–R, or approximately 276,000 participants (i.e., 5% × 5,520,000 participants) will request a copy of the Form 5500–R for further review.

Table 2, set forth below, applies the foregoing assumptions and cost and burden hour estimates to the SAR requirements.

TABLE 2.—CURRENT SAR REQUIREMENTS ANNUAL BURDEN HOUR COST ESTIMATES

	Hours	Costs
Small plans: Distribution:		
1. Plans distributing SARs:		
● 3,680,000 part's × 1/40 hr =	92,000	
● 3,680,000 part's × $0.35 ea =		$1,288,000
2. Plans utilizing notice/5500–R:		
● Posting of notice =	0	0
● 572,000 distributions (296,000 inactive part's plus 276,000 active part's requesting a copy of the 5500–R) × 1/40 hr =	14,300	

TABLE 2.—CURRENT SAR REQUIREMENTS ANNUAL BURDEN HOUR COST ESTIMATES—Continued

		Hours	Costs
● 572,000 part's × $0.35 ea	=		200,200
Total distribution	=	106,300	1,488,200
Preparation (see table 1)	=	315,275	6,305,500
Total impact, small plans	+	421,575	7,793,700
Large plans:			
Distribution:			
● 182,800,000 part's × 1/40 hr	=	4,570,000	
● 182,800,000 part's × $0.35 ea	=		63,980,000
Preparation (see table 1)	=	53,500	1,070,000
Total impact, large plans	=	4,623,500	65,050,000
All plans:			
Total distribution	=	4,676,300	65,468,200
Total preparation	=	368,775	7,375,500
Total impact, all plans	=	5,045,075	72,843,700

[FR Doc. 89-7415 Filed 3-28-89; 8:45 am]

BILLING CODE 4510-00-M

Employment and Training Administration

[TA-W-21,610 et al.]

Crystal Oil Co., Shreveport, LA, et al.; Dismissal of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Crystal Oil Company, Shreveport, Louisiana and Silverridge Corporation, Van Buren, Arkansas and Oklahoma City, Oklahoma. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissal of the applications were issued.

TA-W-21,610; Crystal Oil Company, Shreveport, Louisiana (March 17, 1989)

TA-W-21,958; Silverridge Corporation, Van Buren, Arkansas

TA-W-21,959; Oklahoma City, Oklahoma (March 17, 1989)

Signed at Washington, DC this 22nd day of March 1989

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-7416 Filed 3-28-89; 8:45 am]

BILLING CODE 4510-30-M

Justiss Oil Co. et al.; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January and February 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-21,633; Justiss Oil Co., Gene, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,664; Sam's Well Service, Inc., Guymon, OK

A certification was issued covering all workers separated on or after October 1, 1985 and before September 5, 1986.

TA-W-22,052; Ohio L and M Co., Inc., Reno, OH

A certification was issued covering all workers separated on or after October 5, 1985 and before December 31, 1987.

TA-W-21,726; J.C. Sulsberger Drilling Co., Flora, IL

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,629; Hydrostatic Tubing Testers, Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,684 & TA-W-21,685; Atco Drilling, Inc., Operating at Various Locations in the Following States: Montana and Wyoming

A certification was issued covering all workers separated on or after October 5, 1985.

TA-W-22,121; Daniel Geophysical, Inc., Dallas, TX

A certification was issued covering all workers separated on or after October 5, 1985.

TA-W-22,121A; Daniel Geophysical, Inc., Located in Colorado

A certification was issued covering all workers separated on or after October 5, 1985.

TA-W-22,121B, Daniel Geophysical, Inc., Located in Texas

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,972; States Geophysical Corp., Wichita Falls, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-22,008 & TA-W-22,009; Allegheny Nuclear Surveys, Inc Weston, WV & Elderton, PA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,737; McCullough Co., Bossier City, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,697; C-2 Logging, Inc., Shreveport, LA

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-22,198; Thymea Corp., Farmington, NM

A certification was issued covering all workers separated on or after January 1, 1987.

TA-W-21,846; Galloway Drilling Co., Inc., Wakeeney, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,129; Energy Operating Corp., Dallas, TX

A certification was issued covering all workers separated on or afrer October 1, 1985 and before January 15, 1987.

TA-W-22,129A; Energy Operating Corp. Located in Montana

A certification was issued covering all workers separated on or after October 1, 1985 and before January 15, 1987.

TA-W-22,129B; Energy Operating Corp. Located in North Dakota

A certification was issued covering all workers separated on or after October 1, 1985 and before January 15, 1987.

TA-W-22,129C; Energy Operating Corp. Located in Oklahoma

A certification was issued covering all workers separated on or after October 1, 1985 and before January 15, 1987.

TA-W-22,129D; Energy Operating Corp. Located in Wyoming

A certification was issued covering all workers separated on or after October 1, 1985 and before January 15, 1987.

TA-W-22,130; Energy Operating Corp., Billings, MT

A certification was issued covering all workers separated on or after October 1, 1985 and before January 15, 1987.

TA-W-22,131; Energy Operating Corp., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985 and before January 15, 1987.

TA-W-21,126; Eastman Whipstock, Inc., Lateral Drilling Div. Brookhaven, MS

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA-W-21,127; Eastman Whipstock, Inc., Lateral Drilling Div. Corpus Christi, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA-W-21,128; Eastman Whipstock, Inc., Lateral Drilling Div. Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA-W-22,044; J.L. Beck Drilling Co., Pleasantville, PA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,850; Golden Services, Inc., Victoria, TX

A certification was issued covering all workers separated on or after January 1, 1987.

TA-W-21,625; GCO Drilling Co., Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,724; H & L Rental, Inc., Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,695; Berge Exploration, Inc., Wheatridge, CO

Certification was issued covering all workers separated on or after October 30, 1987 and before September 30, 1988.

TA-W-21,631; The John A. Frye Co., Wilkes Barre, PA

A certification was issued covering all workers engaged in the production of mens and womens casual shoes and boots separated on or after April 1, 1988.

TA-W-21,607; Clark and Son, Inc., St. Clair, MO

A certification was issued covering all workers separated on orafter October 1, 1985 and before September 30, 1986.

TA-W-21,618; Donham Oil Tool Co., Watford City, ND

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-22,079; Terrell Drilling, Inc., Grayville, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1986.

TA-W-21,812; Charles Bearden Drilling, Wichita Falls, TX

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-22,090; Warrior Drilling Co., Wichita, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,687; Advance Consultants Corp., Midland, TX

Certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,041; H & S Rotary Drilling, Bradford, PA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,578; Maxus Energy Corp. (Formerly Diamond Shamrock Exploration Co), Amarillo, TX

A certification was issued covering all workers separated on or after October 19, 1987.

TA-W-22,091; Western Geophysical Co., Englewood, CO

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA-W-22,091A; Western Geophysical Co., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA-W-21,769; Tri-Service Drilling, Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,769A; Tri-Service Drilling, Midland Southwest, Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,114; Burris Drilling Co., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,114A; Burris Drilling Co. Located in Montana

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,114B; Burris Drilling Co. Located in Nevada

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,114C; Burris Drilling Co., Located in North Dakota

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,114D; Burris Drilling Co., Located in Utah

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,017; Century Drilling, Inc., Pittsburgh, PA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,820; Dale's Oilwell Cementing, Inc., Oil City, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,180; Savage Drilling, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before June 30, 1988.

TA-W-21,519; Health-Tex, Inc., Cranston Warehouse & Distribution Center, Cranston, RI

A certification was issued covering all workers separated on or after October 17, 1987.

TA-W-21,928; Pool Company, Harvey, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22,140; Felmont Oil Corp., Houston, TX

A certification was issued covering all workers separated on or after January 1, 1986.

TA-W-22,141; Felmont Oil Corp., Lafayette, LA

A certification was issued covering all workers separated on or after January 1, 1986.

TA-W-21,631; The John A. Frye Co., Wilkes Barre, PA

A certification was issued covering all workers engaged in the production of mens and womens casual shoes and boots separated on or after April 1, 1988.

TA-W-21,752 and TA-W-21,752A; Reliable Production Service, Inc., Livonia, LA and Quincy, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,866; Hooks Brothers Oil Co., Borger, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,867; Hooks Well Services Div., Borger, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,868; Hooks Tank Truck Service Div., Borger, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,869; Hooks Welding & Roustabout Div., Borger, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,690; Atlas Wireline Service, Gillette, WY

Certification was issued covering all workers separated on or after January 1, 1986 and before July 1, 1987.

TA-W-21,823; Don Graves Well Logging Booker, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA-W-21,749; R.E. Williams Drilling Co., Inc., Memphis, TN

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,749A; R.E. Williams Drilling Co., Inc., Located in Alabama

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,749B; R.E. Williams Drilling Co., Inc., Located in Louisiana

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,749C; R.E. Williams Drilling Co., Inc., Located in Mississippi

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,796; Bob's Casing Crews, Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,815; Cliffs Drilling Co., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,951; Schlumberger Well Services, Broussard, LA

A certification was issued covering all workers separated on or after October 5, 1985 and before July 1, 1988.

TA-W-21,951; Schlumberger Well Services, Lafayette, LA

A certification was issued covering all workers separated on or after October 5, 1985 and before July 1, 1988.

TA-W-21,952; Schlumberger Well Services, Magnolia, AR

A certification was issued covering all workers separated on or after October 5, 1985 and before July 1, 1988.

TA-W-21,562; ERC Industries, Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,562A; ERC Industries, Carrizo Springs, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,574; Liberty Oil and Gas Corp., New Roads, LA

A certification was issued covering all workers separated on or after October 18, 1987.

TA-W-21,535; Southern Illinois Oil Producers, Inc., Olney, IL

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,575; Lily Kids, Inc., Carolina, PR

A certification was issued covering all workers separated on or after October 21, 1987.

TA-W-21,957; Shuler Drilling Co., Inc., Ed Dorado, AR

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1987

TA-W-21,552; Benton Casing Service, Victory, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-21,553; Benton Casing Service, Lake Charles, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-21,554; Benton Casing Service, Winnie, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-21,555; Benton Casing Service, Houma, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-21,509; Carbon River Energy, Seattle, WA

A certification was issued covering all workers separated on or after January 1, 1988 and before November 30 1988

TA-W-21,705; Cimarron Rigs, Inc., Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before June 30, 1987.

TA-W-21,915; Norse Well Service, Inc. Havre, MT

A certification was issued covering all workers separated on or after October 1, 1985 December 31, 1987.

TA-W-21,539; The Three B Oil Co., Midland, TX

A certification was issued covering all workers separated on or after October 12, 1987.

TA-W-21,797; Boco of Louisiana, Inc., Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988

TA-W-21,877; International Oil and Gas Corp., Houston, TX

A certification was issued covering all workers separated on or after November 3, 1987.

TA-W-21,110, Atlas Wireline, Ventura, CA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22,218; Dresser Atlas, Farmington, NM

A certification was issued covering all workers separated on or after October 1, 1985 and before November 1, 1986.

TA–W–22,138; Felmont Oil Corp., Olean, NY

A certification was issued covering all workers separated on or after January 1, 1986.

TA–W–22,139; Felmont Oil Corp., Midland, TX

A certification was issued covering all workers separated on or after January 1, 1986.

TA–W–22,069; Shelby Drilling Co., Englewood, CO

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1989.

TA–W–22,060; Rawhide Mud Co., Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,717, Edco Drilling and Producing, Inc., Waynesburg, OH

A certification was issued covering all workers separated on or after January 1, 1987.

TA–W–22,057; Pioneer Drilling Co., Inc., Plainville, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,779; American Drilling Co., San Antonio, TX

A certification was issued covering all workers separated on or after January 1, 1988.

TA–W–22,067; Sheehan Exploration, Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA–W–22,068; Sheehan Exploration, Sidney, MT

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA–W–21,990; Underwood Oil Well Service, Inc., Monroe, LA

A certification was issued covering all workers separated on or after October l, 1985 and before January 1, 1986.

TA–W–21,793; Basin Packer Co., Inc., Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,757. Sealy & Co., Inc., Breckenridge; TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,647; Milpark Drilling Fluids, Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1987.

TA–W–21,626; Gard Drilling Co., Inc., Gallipolis, OH

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,686; Abercrombre Drilling, Inc., Wichita, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1987.

TA–W–22,248; New York Abrasive File Co., Kenmore, NY

A certification was issued covering all workers separated on or after November 28, 1987.

TA–W–21,630; JVA Operating Co., Inc., Midland, TX

A certification was issued covering all workers separated on or after October 31, 1988.

TA–W–21,845; G & G Tong Rental Oil Co., Denver City, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22,047; Lingafelter Drilling, Wayne City, IL

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,762; SOPAC Exploration, Inc., Drumright, OK

A certification was issued covering all workers separated on or after October 1, 1987.

TA–W–21,754; S.W. Neilly Air Notching, Bradford, PA

A certification was issued covering all workers separated on or after October 1, 1985

TA–W–21,691; Atlas Wireline Service Div. of Western Atlas International, Anchorage, AK

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,943; Reliance Well Service, Magnolia, AR

A certification was issued covering all workers separated on or after January 1, 1986.

TA–W–22,239; The Lee Apparel Co., Inc., Houston, TX

A certification was issued covering all workers separated on or after November 28, 1987.

TA–W–22,238; The Lee Apparel Co., Inc., Jasper, GA

A certification was issued covering all workers separated on or after October 31, 1987 and before January 19, 1989

TA–W–22,573; The Lee Apparel Co., Inc., Pulaski, VA

A certification was issued covering all workers separated on or after October 20, 1987 January 19, 1989

TA–W–21,881; John Ruggles & Co., Montgomery, TX

A certification was issued covering all workers separated on or after October 31, 1987.

TA–W–21,681; A.L. Abercrombe, Inc., Witchita, KS

A certification was issued covering all workers separated on or after November 8, 1987.

TA–W–21,886; Diamond M Drilling, Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1987

TA–W–21,942; Ballard Enterprises, Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,579; McIlnay & Associates, Inc., Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,942; Red Oak Exploration, Inc., Duncanville, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,949; Santa Ana Corp., Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA–W–22,243; MI Drilling. Olney, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before February 1, 1987.

I hereby certify that the aforementioned determinations were issued during the months of January 1989 and February 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal

business hours or will be mailed to persons to write to the above address.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

Dated March 21, 1989.

[Doc. 89-7417 Filed 3-28-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-21,973]

Stream Energy, Inc., Oklahoma City, OK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Stream Energy, Inc., Oklahoma City, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-21,973; Stream Energy, Inc., Oklahoma City, Oklahoma (March 21, 1989)

Signed at Washington, DC this 22nd day of March 1989.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[Doc. 89-7418 Filed 3-28-89; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (89-23)

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: March 29, 1989.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, Telephone (202) 453-2430, Fax (202) 755-2371.

Patent Application 244,377: Liquid Sheet Radiator Apparatus; filed September 15, 1988.

Patent Application 248,018: Method of Insetting Predesigned Disbond Areas into Composite Laminates; filed September 23, 1988.

Patent Application 252,081: Passive Venting Technique for Shallow Cavities; filed September 30, 1988.

Patent Application 250,466: Passive Venting Technique for Shallow Cavities; filed September 28, 1988.

Patent Application 248,020: Circumferential Pressure Probe; filed September 1, I988.

Patent Application 239,260: Pultrusion Die Assembly and Method; filed September l, 1988.

Patent Application 250,661: Polyphenylquinoxalines Via Aromatic Nucleophilic Displacements; filed September 28, 1988.

Patent Application 248,009: Low Dielectric Fluorinated Poly (Phenylene Ether Ketone) Film and Coating; filed September 23, 1988.

Patent Application 244,367: A Reference Standard for Bi-Directional Reflection Distribution Function and Bi-Directional Transmission; filed September 15, 1988.

Patent Application 250,196: Optically Controlled Welding System; filed September 28, 1988.

Patent Application 246,595: Improved Docking Alignment; filed September 15, 1988.

Patent Application 248,101: Magnetic Attachment Mechanism; filed September 23, 1988.

Patent Application 248,501: Rotary Control Lock; filed September 23, 1988.

Patent Application 250,195: Multi-Element Spherical Shell; Generation; filed September 28, 1988.

Patent Application 248,019: Preparation of Dilute Magnetic Semiconductor Films by Metalorganic Chemical Vapor Deposition; filed September 23, 1988.

Patent Application 251,499: Graphite Fluoride Fiber Polymer Composite Material; filed September 30, 1988.

Patent Application 244,376: Threaded Average Temperature Thermocouple; filed September 15, 1988.

Patent Application 235,150: YLF Laser End Pumped by a Semiconductor Diode Laser Array; filed August 23, 1988.

Patent Application 237,035: Remote Object Configuration/ Orientation Determination; filed August 29, 1988.

Patent Application 232,735: Method and Apparatus for Determining Optical Absorption and Emission Characteristics of a Crystal Fiber; filed August 16, 1988.

Patent Application 221,387: Method and Apparatus for Reducing Speckle; filed July 16, 1988.

Patent Application 221,388: Gripping Device; filed July 19, 1988.

Patent Application 213,392: Lightweight Ceramic Insulation and Method; filed June 30, 1988.

Patent Application 217,725: Tank Gauging Apparatus and Method; filed July 11, 1988.

Patent Application 213,559: Bio-Reactor Cell Culture; filed June 30, 1988.

Patent Application 213,558: Horizontally Rotated Cell Culture System; filed June 30, 1988.

Patent Application 213,880: Hazards Protection for Space Suits and Helmets; filed June 30, 1988.

Patent Application 223,124: Method for Maintaining Precise Suction Strip Porosities; filed July 22, 1988.

Patent Application 225,427: Zero Free-Play Pin Clevis; filed July 28, 1988.

Patent Application 231,025: Power Supply Conditioning Circuit; filed August 11, 1988.

Patent Application 200,874: Method for Viterbi Decoding of Large Constant Length Convolutional Codes; filed June 1, 1988.

Patent Application 210,480: Compression Pylon; filed June 23, 1988.

Patent Application 231,026: Novel Ladder Polymers for Use as High Temperature Stable Resins or Coatings; filed August 11, 1988.

Patent Application 219,016: Bromated Graphite Fibers and Method of Producing the Same; filed July 14, 1988.

Patent Application 217,533: Planar Thin Film Squid with Integral Flux Concentrator; filed July 11, 1988.

Patent Application 205,771: Surface Tension Confined Liquid Cryogen Cooler; filed June 13, 1988.

Patent Application 210,486: Method and Apparatus for Non-Destructive Testing of Temper Embrittlement in Steels; filed June 23, 1988.

Patent Application 203,376: Doppler-Corrected Differential Detection System; filed June 7, 1988.

Patent application 205,900: Video Analog Signal Divider; filed June 13, 1988.

Patent Application 210,445: Method of Dispensing Reagent Chemicals in Space; filed June 23, 1988.

Patent Application 210,277: Ultrasonic Method and Apparatus for

Determining Crack Opening Load; June 23, 1988.
Patent Application 210,487: Skin Friction Balance; filed June 23, 1988. Patent Application 205,898: High Temperature Electric Arc Furnace and Method; filed June 13, 1988.
Patent Application 154,712: Toggle Release; filed February 11, 1988.
Patent Application 165,956: Hatch Cover; filed March 9, 1988.
Patent Application 172,101: Hanging Drop Crystal Growth Apparatus and Method; filed March 23, 1988.
Patent Application 172,100: Acoustic Convective System; filed March 23, 1988.
Patent Application 172,105: A Universal Control System for Motors; filed March 23, 1988.
Patent Application 151,678: Stiffened Titanium Panels; filed February 2, 1988.
Patent Application 168,065: Thermal Compensating Mount; filed March 14, 1988.
Patent Application 172,102: Aluminum Alloy; filed March 23, 1988.
Patent Application 165,946: Dual Fuel Dual Mode Rocket; filed March 9, 1988.
Patent Application 176,547: Method of Forming a Multiple Layer Dielectric and a Hot Film Sensor Therewith; filed April 1, 1988.
Patent Application 176,587: Nozzle Fabrication Technique; filed April 1, 1988.
Patent Application 176,545: Low Temperature Storage Container for Transporting Perishables to Space Station; filed April 1, 1988.
Patent Application 176,544: Structurally Tailorable Non-Linear Snap through Spring System; filed April 1, 1988.
Patent Application 182,266: Adaptive Data Acquisition; filed April 14, 1988. Patent Application 182,000: Payload Deployment Method and System; filed April 15, 1988.
Patent Application 184,235: Apparatus for Using a Time Interval Counter to Measure Frequency Stability; filed April 21, 1988.
Patent Application 184,236: Articulated Suspension System; filed April 21, 1986.
Patent Application 187,716: Real Time Image Difference Detecting Using a Polarization Rotation Special Light Modulator; filed April 29, 1988.
Patent Application 184,234: Improved Properties of SiGE/GaP Alloys; filed April. 21, 1988.
Patent Application 190,185: Low Loss High Isolation Fiber Optic Isolator; filed May 4, 1988.
Patent Application 192,563: Actuated Forebody Strakes; filed May 11, 1988.
Patent Application 195,226: AVSLI Single Chip (255–223) Reed-Solomon Encorder With Interleaver; filed May 18, 1988.
Patent Application 195,225: Data Volume Reduction for Imaging Radar Polarity; filed May 18, 1988.
Patent Application 195,221: Navigation System for Land Vehicles; filed May 18, 1988.
Patent Application 192,562: Airplane Takeoff and Landing Performance Monitoring System; filed May 11, 1988.
Patent Application 205,899: Atmospheric Autorotating Imaging Device; filed June 13, 1988.
Patent Application 203,177: Radio Frequency Strain Monitor; filed June 7, 1988.
Patent Application 203,178: Method and Apparatus for Detecting Laminar Flow Separation Reattachment; filed June 7, 1988.
Patent Application 154,716: Phase Length Optical Phase Locked Loop Sensor; filed February 11, 1988.
Patent Application 154,712: Toggle Release; filed February 11, 1988.
Patent Application 154,718: Real Time Optical Multiple Object Recognition and Tracking System and Method; filed February 11, 1988.
Patent Application 154,711: Timing Control System; filed February 11, 1988.
Patent Application 154,713: Trochoidal Analysis of Scattered Electrons in a Merged Electron-Ion Beam Geometry; filed February 11, 1988.
Patent Application 156,059: Trailer Shield Assembly for a Welding Torch; filed February 16, 1988.
Patent Application 156,393: Electrostatic Discharge Test Apparatus; filed February 16, 1988.
Patent Application 159,613: Non-Contact Temperature Pattern Measuring Device; filed February 23, 1988.
Patent Application 161,681: Crystal Growth Apparatus; filed February 29, 1988.

Edward A. Frankle,
General Counsel.
Date: March 22, 1989.

[FR Doc. 89–7381 Filed 3–28–89; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Meeting; Economic Advisory Panel

The National Science Foundation announces the following meeting:
Name: Advisory Panel for Economics
Date/Time: Thursday April 13, 1989—9:00 a.m. to 5:00 p.m.; Friday April 14, 1989—9:00 a.m. to 5:00 p.m.; Saturday April 15, 1989—8:30 a.m. to 1:30 p.m.
Place: National Science Foundation, Room 540, 1800 G Street NW., Washington, DC 20550
Type of Meeting: Closed
Contact Person: Dr. Daniel H. Newlon, Program Director, Dr. Lynn A. Pollnow, Program Director, Dr. James H. Blackman, Deputy Director, Division of Social Economic Science, Room 336, National Science Foundation, Washington, DC 20550, telephone (202) 357–9674
Summary Minutes: May be obtained from the Contact Persons at the above address
Purpose of Meeting: To provide advice and recommendations concerning support for research in Economics
Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
March 24, 1989.

[FR Doc. 89–7437 Filed 3–28–89; 8:45 am]
BILLING CODE 7555–01–M

Meeting; Law and Social Science Advisory Panel

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:
Name: Advisory Panel for Law and Social Science
Date/Time: April 7–8, 1989: 8:30 a.m. to 5:00 p.m., Closed
Place: Room 642, National Science Foundation, 1800 G Street, NW., Washington, DC 20550
Type of Meeting: Closed
Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Science, National Science Foundation, Washington, DC 20550, Room 336, Telephone (202) 357–9567.
Purpose of Panel: To provide advice and recommendations concerning research in Law and Social Science.
Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Reason for Late: Notice was inadvertently misplaced.

Dated: March 24, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-7438 Filed 3-28-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-3 (50-261)]

Carolina Power and Light Co.; Issuance of Amendment to Materials License SNM-2502

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Materials License No. SNM-2502 held by the Carolina Power and Light Company for the receipt and storage of spent fuel at the H. B. Robinson Independent Spent Fuel Storage Installation, located on the H. B. Robinson Steam Electric Plant Unit No. 2 site, Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications in Appendix A, section 5.5.1 to change the number of Horizontal Storage Modules which can be built in an array. The change does not alter the intent of the Technical Specification nor any safety margins.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated January 9, 1989, and as revised February 1, 1989, and (2) Amendment No. 5 to Materials License No. SNM-2502, and (3) the Commission's letter to the licensee dated March 23, 1989. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Hartsville Memoral Library, 220 N. Fifth Street, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 23rd day of March 1989.

For the U.S. Nuclear Regulatory Commission.

Leland C. Ruse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety.

[FR Doc. 89-7439 Filed 3-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP-6 issued to the Consumers Power Company (the licensee), for operation of the Big Rock Point Plant located in Charlevoix County, Michigan.

In accordance with the licensee's application for amendment dated October 24, 1988, the proposed amendment would revise the Technical Specifications by deleting section 6.4.2(d). Big Rock Point has committed to ANSI N323.1978 which includes a semiannual calibration frequency and a source check on each scale or decade normally used, daily or prior to use, on the gamma and neutron dose-rate measuring instruments.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 2, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the oportunity to

present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petiton should be also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 24, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 23rd day of March

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89–7440 Filed 3–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–155]

Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–6 issued to the Consumers Power Company (the licensee), for operation of the Big Rock Point Plant located in Charlevoix County, Michigan.

In accordance with the licensee's application for amendment dated September 22, 1988, and supplemented on January 17, 1989, the proposed amendment would revise the Technical Specifications by providing for a new organizational unit, the Nuclear Safety Services Department (NSSD) to discharge offsite safety review functions, instead of the Nuclear Safety Board (NSB).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 28, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's properly, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator

should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 22, 1988, and supplemented on January 17, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 21st day of March 1989.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89–7441 Filed 3–28–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–352]

Philadelphia Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–39, issued to the Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station, Unit 1, located in Montgomery and Chester Counties, Pennsylvania. The proposed amendment is in response to the licensee's submittal dated March 23, 1989.

The amendment would revise the Technical Specification (TS) Table 3.3.3–2 to reflect conformance with the Commission's staff's position related to adequacy of station electric distribution system voltages.

Because the undervoltage relays' setpoints would be required by the present Technical Specification to be set a nonconservative values, a revision to the Technical Specifications is needed to reflect installation of new undervoltage relays necessary for conservative undervoltage protection in conformance with the staff's technical position. The licensee states that while compensatory measures are in effect to provide justification for continued operation, changes to the undervoltage relay setpoints are to be processed on an exigent basis in order to allow unit start-up with conservative undervoltage relay setpoints in conformance with the staff's Technical Position.

NRC has reviewed the circumstances resulting in the submittal of the proposed TS changes. It is desirable to promptly act on this change in order to assure operational and procedural continuity of the Limerick Generating Station, Unit 1. Accordingly, NRC staff has determined that sufficient justification exists for consideration of this amendment on an exigent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

NRC staff has reviewed the licensee's proposed application and has determined that the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the new setpoints will continue to ensure that adequate voltages are available to all Class 1E equipment in all modes of plant operation.

NRC staff has also determined that the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any previously analyzed because the function and operation of the undervoltage relays is unchanged. The new setpoints will be more conservative than the current setpoints.

The proposed Technical Specification changes do not involve a significant reduction in a margin of safety because the revised setpoints are more conservative than the existing setpoints.

The licensee has provided the following analysis in accordance with the three standards set forth in 10 CFR 50.92:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed relay setpoints will ensure that adequate voltages are available to all Class 1E equipment in all modes of plant operation. The proposed changes will provide consistency to the design objectives approved by the NRC and committed to in the design bases. The current setpoints do not fully comply with those objectives. Therefore, the proposed changes will not result in a significant decrease in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any design changes to the undervoltage protection scheme. Since the proposed TS changes will result in system operation consistent with the design bases (which will remain the same), the current FSAR will remain complete and accurate in its discussion of the licensing basis events and in analyzing plant response and consequences. Therefore, no equipment is adversely affected, nor could the proposed changes involve any potential initiating events which would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses are still valid. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

As discussed above, the proposed changes do not change the design bases but will result in full compliance with the FSAR commitment. As such, an incremental improvement in the margin of safety will result. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination as discussed above and agrees with the licensee's conclusion that this action does not involve a significant hazards consideration. Therefore, the Commission proposes to determine that this change does not involve significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 28, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this acton, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 23, 1989, which is available for public inspection at the

Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 24th day of March 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–7442 Filed 3–28–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

[Cir. No. A–76]

Circular A–76 Amendment; Correction

AGENCY: Office of Management and Budget.

ACTION: Correction.

SUMMARY: On March 13, 1989 at 54FR10470 a notice was published regarding Transmittal No. 8, dated March 1, 1989, to Circular A–76, "Performance of Commerical Activities". The transmittal memorandum itself, however, was inadvertently omitted. The full text of Transmittal No. 8 is printed below.

For further information contact Linda Mesaros, Office of Federal Procurement Policy, Office of Management and Budget, (202) 395–3300.

David F. Baker,

Deputy Administrator for the Office of Federal Procurement Policy.

Memorandum for Heads of Executive Departments and Agencies

From: Richard G. Darman, Director.

Subject: Performance of Commercial Activities.

This Transmittal Memorandum updates the inflation factors used for computing Government personnel and non-pay cost increases. The federal pay raise assumptions and the non-pay category rates are contained in the President's FY 1990 Budget. The following factors should be applied per paragraph C of the Supplement on pages IV–6 and IV–7:

Federal pay raise assumptions effective date	Inflation factors	
	Military	Civilian
Jan. 1990	3.6	2.0
Jan. 1991	3.2	3.0
Jan. 1992	3.0	2.8
Jan. 1993	3.0	2.3
Jan. 1994	3.0	1.8

Non-pay Categories (Supplies, Equipment, etc.)	
FY 1990	3.6
FY 1991	3.3
FY 1992	2.8
FY 1993	2.3
FY 1994	1.8

The FY 1990 through FY 1993 rates are the same as listed in Transmittal Memorandum No. 6.

This revision is effective as follows: all changes in the Transmittal Memorandum are effective upon the date of this signed memorandum and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been opened before this date.

[FR Doc. 89–7454 Filed 3–28–89; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Uruguay Round Negotiations on Tariff and Non-Tariff Measures

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearings and request for written comments on the Uruguay Round Tariff and Non-Tariff Measure Negotiations.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking views of interested parties on specific tariff and non-tariff measures for which the United States should seek reduction or elimination in the Uruguay Round market access negotiations. The TPSC invites written comments and will hold two public hearings on this subject. The first hearing, scheduled for Tuesday, May 16, continuing on May 17, if necessary, will address only foreign tariff and non-tariff measures affecting U.S. exports. A second public hearing, tentatively scheduled for Tuesday, October 31, and, if necessary, November 1, will address the possible reduction or elimination of United States tariff and non-tariff measures.

FOR FURTHER INFORMATION CONTACT: On market access negotiations and the hearings contact Nancy Adams, Director of Tariff Affairs, (202) 3905–5097 or Wendy Silberman, Director of Non-Tariff Measures, (202) 395–3063. For general information on the Uruguay Round and activities of other negotiating groups, contact the U.S. Uruguay Round Coordinator's Office, Office of the U.S. Trade Representative, (202) 395–3324.

SUPPLEMENTARY INFORMATION:

I. General

The Uruguay Round Negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT), which were initiated in 1986, are scheduled for completion in December, 1990. The negotiations cover a broad range of issues of interest to the United States. A notice requesting views on issues raised in the negotiations, other than market access issues addressed in this notice, will be issued later this spring.

Market access negotiations focusing on the reciprocal elimination and/or reduction of tariffs and non-tariff measures are part of the overall Uruguay Round negotiations. Negotiations on agricultural products will be conducted in a comprehensive manner in the Negotiating Group on Agriculture. The United States will conduct negotiations on other products using a request/offer negotiating approach. Regardless of the approach to be used for different products in the negotiations, views are being solicited on U.S. export interests and U.S. import interests on both, industrial and agricultural products, at this time.

The United States is in the process of developing formal requests to foreign governments for market access liberalization and, subsequently, will develop a U.S. offer list of concessions on U.S. tariffs and non-tariff measures in response to foreign requests of the United States. The TPSC is seeking views of all interested persons.

II. U.S. Requests of Foreign Trading Partners

The first priority for the negotiations is the identification of the foreign tariffs and non-tariff measures which significantly impede market access for U.S. exports. The public hearing scheduled for May 16, 1989, is to provide an opportunity for comment and for the submission of private sector requests for consideration of specific foreign tariffs and non-tariff measures for possible inclusion on the U.S. request list. The identified barriers will be evaluated subsequently by the U.S. Government to determine whether the United States should seek reduction or elimination of these measures in the Uruguay Round. The United States intends to submit an initial request list to trading partners participating in the Negotiating Groups on Tariffs and Non-Tariff Measures in July, 1989.

Information Requested in Submissions on U.S. Requests of Foreign Trading Partners

To assist in the preparation of the U.S. request lists, the TPSC requests that the following information be provided in a written or oral statement: (1) Description of the product(s) of interest, with corresponding (foreign) harmonized system subheading numbers (6 to 8 digit) for the country involved; (2) foreign markets of priority export interest which currently restrict access; (3) description of the tariffs and/or non-tariff measures which impede access to these markets and, if known, alleged justification used for the action; (4) action recommended for the U.S. Government to take with regard to the barrier (i.e. reduce tariff by "x" percent, eliminate non-tariff measure, etc.); and (5) an indication of anticipated growth in sales if barriers are reduced or eliminated, as recommended above.

III. U.S. Offers—Possible Modification of U.S. Measures

During the second half of 1989 the United States will develop its offer list in response to foreign requests for reduction or elimination of U.S. tariffs and non-tariff measures. To assist in this process, the TPSC solicits views of interested parties on the possible reduction or elmination of U.S. tariffs in accordance with the notice published in the **Federal Register** on January 17, 1989. (FR Vol. 54, No. 10) and on the possible reduction or elmination of U.S. non-tariff measures. Views may be submitted in a written or oral statement for a hearing tentatively scheduled to be held on October 31, 1989.

Information Requested in Submissions on U.S. Measures

Submissions relating to possible modification of U.S. measures should include: (1) The description of product(s) of interest, with corresponding United States harmonized system subheading numbers (6 to 8 digit); (2) description of the tariffs and/or non-tariff measures in the U.S. market; and (3) recommended action (including, as appropriate, recommendation for maintenance of current treatment) for the U.S. Government to take with regard to this barrier.

IV. Public Hearings

May 16, 1989 Hearing on Foreign Tariffs and Non-Tariff Measures

A public hearing on foreign tariffs and non-tariff measures will be held on Tuesday, May 16, 1989 (and May 17 if necessary), beginning at 10:00 a.m., in Court Room A, Room 100, at the U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Interested persons wishing to testify orally on foreign tariff and non-tariff measures must provide written notice of their intention by noon, Friday, May 5, 1989, to Carolyn Frank, Secretary of the TPSC, Office of the United States Trade Representative, Room 523, 600 Seventeenth Street NW., Washington, DC 20506. This notice must include the following information: (1) Their names, addresses and telephone number; (2) the name(s) of the person(s) presenting the testimony; and (3) a summary of their presentation, including the products, with Harmonized System subheading numbers (6 or 8 digit), and the tariff or non-tariff measure involved.

Persons presenting oral testimony must submit a complete written statement (or pre-hearing brief) in 20 copies by noon, Monday, May 8, 1989, to Carolyn Frank at the address listed above.

Remarks at the hearing will be limited to no more than a 10 minute summary of the written statement to allow time for possible questions from the interagency panel.

Persons not wishing to participate in the public hearings may submit written comments on foreign tariff and non-tariff measures, in 20 copies, by noon, Thursday, May 19, to Carolyn Frank at the address listed above.

Any business confidential material must be clearly marked as such and must be accompanied by a nonconfidential summary thereof. Parties are referred to section 2003 of Title 15 of the Code of Federal Regulations for the rules concerning oral testimony, the submission of written briefs, the treatment of business confidential information and other procedures related to the TPSC hearing.

Tentative October 31 Hearing on United States Tariff and Non-Tariff Measures

Further details for the October 31, 1989 hearing on U.S. tariffs and non-tariff measures will be announced in a subsequent notice. Interested parties may submit written comments on U.S. tariff and non-tariff measures to Carolyn Frank at the address listed above until November 1, 1989.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89-7464 Filed 3-28-89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16893; 811-4619]

Notice of Application; Commercial Separate Account A

March 23, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application on Form N-8F under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Commercial Separate Account A.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: January 12, 1989.

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 the notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 17, 1989. Request a hearing in writing, giving the nature of your interest, the reason for 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, 15 Corporate Place South, Piscataway, New Jersey, 08854.

For Further Information Contact: David S. Goldstein, Special Counsel, (202) 272-3012 (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. The Applicant has no separate legal existence under the law of the State of Wisconsin, pursuant to which it was created in 1973. Commercial Life Insurance Company is the Applicant's depositor ("Depositor"). On March 19, 1986, the Applicant filed a Notification of Registration on Form N-8A and a registration statement on Form N-8B-2 as a unit investment trust under the 1940 Act, and a registration statement on

Form S–6 under the Securities Act of 1933 (File No. 33–4143) to register an indefinite amount of securities of flexible premium variable life insurance policies. The registration statement was declared effective on September 30, 1986 and an initial public offering commenced immediately thereafter.

2. The Applicant did not transfer any of its assets to a separate trust within the last 18 months.

3. On August 11, 1988, the Applicant distributed $9,220.23 to its sole remaining policyholder. This represented the cash value of the policyholder's interest in the sub-accounts of the Applicant. Based upon the allocation instructions of the policyholder to the sub-account(s) of the Applicant, shares of the applicable portfolio of the Continental Series Trust (the "Trust") in which that sub-account invests its assets, were redeemed at their net asset value next determined after receipt of the notice of request for redemption.

4. On November 17, 1988, the Executive Committee of the Board of Directors of the Depositor and authorized individual of the Applicant resolved to liquidate the investments of the Applicant and distribute all assets, except $95,000 in cash to the Depositor. They further resolved to dissolve the Trust.

5. On December 28, 1988 the Depositor requested a redemption of all monies it had advanced to the Applicant except $95,000. The Applicant received $9,395,467.11 representing the net proceeds from the redemption of all remaining assets invested in the portfolios of the Trust on December 29, 1988. On December 29, 1988, the Applicant distributed $9,300,467.11 to the Depositor. The balance of $95,000 was retained.

6. The Applicant incurred no expenses in connection with the distribution of its assets and had no policyholders immediately prior to the distribution of its assets to the Depositor.

7. As of the date of the Application, the Applicant has cash assets of $95,000. The cash is being held to permit the Applicant to retain its existence and authority as a segregated asset account of Commercial Life Insurance Company, a Wisconsin domiciled insurer. Wisconsin insurance statutes permit a corporation to establish a segregated asset account for any part of its business and require the corporation to have and maintain an adequate amount of capital and surplus in the segregated account. The amount allocated to the separate account may be invested and reinvested in securities to the extent insurance company assets are permitted by law, however, the Applicant will not be primarily engaged in the business of "investing, reinvesting, owning, holding or trading in securities" within the meaning of sections 3(a)(1) and 3(a)(3) of the 1940 Act. In addition, the Applicant would be exempt from the definition of an investment company pursuant to section 3(c)(1) as an issuer with fewer than 100 beneficial owners of its securities and which is not making a public offering.

8. The Depositor of the Applicant will notify the Commissioner of Insurance of the State of Wisconsin that it has redeemed all of its investment in the Trust and has distributed a substantial amount of the assets of the Applicant to the General Asset Account of the Depositor.

9. The Applicant has no debts or other outstanding liabilities. The Applicant is not a party to any litigation or administrative proceeding. The Applicant has no policyholders. The Applicant 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 as a unit investment trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonthan G. Katz,

Secretary.

[FR Doc. 89–7403 Filed 3–28–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16892; 811–4618]

Notice of Application: Continental Series Trust

March 23, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application on Form N–8F under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Continental Series Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: January 12, 1989.

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 April 17, 1989. Request a hearing in writing, giving the nature of your interest, the reason for 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, 15 Corporate Place South, Piscataway, New Jersey 08854.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Special Counsel (202) 272–3012 (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. On March 19, 1986 the Applicant filed a Notification of Registration on Form N–8A and a registration statement pursuant to Section 8(b) of the 1940 Act.

2. On March 19, 1986 the Applicant filed a registration statement (File No. 33–4144) of Form N–1A under the Securities Act of 1933 to register an indefinite amount of its shares. The registration statement was declared effective on September 30, 1986 and an initial public offering commenced immediately thereafter.

3. The Applicant is terminating its existence under Massachusetts law.

4. The Applicant has not, within the last 18 months, transferred any of its assets to a separate trust for the benefit of any securityholder.

5. On November 17, 1988, the sole shareholder of the Applicant, Commercial Separate Account A and Commercial Life Insurance Company, the depositor of Commerical Separate Account A, pursuant to section 9.1(a) of the Applicant's Declaration of Trust, authorized termination of the Applicant and redemption of its shares of the Applicant. The Applicant did not distribute any proxy material to the shareholder regarding the redemption and dissolution.

6. Immediately prior to liquidation the Applicant's portfolios had aggregate net assets of $9,393,467.11, distributed as follows: Capital Appreciation Portfolio $3,535,342,78; Income Plus Portfolio $4,731,103.30; Money Market Portfolio $1,129,021.03. The total shares outstanding and the net asset value per share in each portfolio was: Capital Appreciation 437,499.500 shares, 8.080 net asset value; Income Plus 451,067.188

shares, 10.488 net asset value; Money Market 112,902.103 shares, 10.00 net assets value.

7. All securities owned by the Applicant's portfolios were sold at market price on the date of liquidation through broker-dealers selected by the Investment Advisor of the Applicant, who is responsible to seek best execution of each transaction consistent with the Rules of Fair Practice of the NASD. Brokerage commissions were paid to the executing broker-dealers out of the assets of each portfolio. The expenses incurred and paid by the applicant in connection with the liquidation were $38,742.01, resulting in a lower amount distributed to the sole shareholder.

8. On December 29, 1988, the Applicant distributed $9,395,467.11 in cash to its sole shareholder, Commercial Separate Account A, which represented the net redemption proceeds received from the liquidation of securities held by each of its three portfolios and is in the process of winding-up its affairs.

9. Applicant has no assets. Applicant has no debts or other liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no shareholders. Applicant is not now engaged, nor does it intend to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7404 Filed 3-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24845]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 23, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated 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(s) and/or declaration(s) and any amendments 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(s) and/or declaration(s) should submit their views in writing by April 17, 1989 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 address(es) 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 identify 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.

Columbia Gas System, Inc., et al. (70-7437)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and certain of its subsidiaries, Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Kentucky, Inc., Columbia Gas of New York, Inc., Columbia Gas of Virginia, Inc., Columbia Gas of Maryland, Inc., and Lynchburg Gas Company, all located at 200 Civic Center Drive in Columbus, Ohio 43215, and Columbia Gulf Transmission Company, 3805 W. Alabama Avenue, Houston, Texas 77057, Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77027, Columbia Gas Development of Canada LTD., 639 5th Avenue, SW., Calgary, Alberta Canada T2P OM9 ("Development Canada"), and Commonwealth Gas Pipeline Corporation, Commonwealth Gas Services, Inc., Commonwealth Propane, Inc., all located at 800 Moorefield Park Drive in Richmond, Virginia 23236, and Columbia Gas System Service Corporation, Columbia LNG Corporation, Columbia Hydrocarbon Corporation, Columbia Alaskan Gas Transmission Corporation, Columbia Coal Gasification Corporation, The Inland Gas Company, Inc., Tristar Ventures Corporation, all located at 20 Montchanin Road in Wilmington, Delaware 19807, and Columbia Natural Resources, Inc., and Columbia Gas Transmission Corporation, both located at 1700 MacCorkle Avenue SE. in Charleston, West Virginia 25314 ("Subsidiaries"), have filed a post-effective amendment to the application-declaration in this matter pursuant to sections 6(b), 9, 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By orders in this proceeding dated December 23, 1987 (HCAR No. 24541), January 7, 1988 (HCAR No. 24577), February 4, 1988 (HCAR No. 24571), March 30, 1988 (HCAR No. 24610), August 30, 1988 (HCAR No. 24706) and December 30, 1988 (HCAR No. 24800), the Commission approved Columbia's proposals to provide short- and long-term financing to certain of the Subsidiaries for the purpose of partially funding their 1988-1989 construction programs and for other corporate purposes, by making short-term open account advances, and through the issuance of, by the Subsidiaries, and the purchase of, by Columbia. Installment promissory notes ("Notes") and shares of common stock ("Common").

The December 23, 1987 order ("Order") approved the financing of Development Canada in the amount of $14.1 million par amount of common stock and $55 million principal amount of Notes. Of the $14.1 million, $9,233,796.27 par amount of Common was issued pursuant to this Order, leaving $4,866,203.73 authorization remaining.

The Order was issued pursuant to the joint request of Columbia and Development Canada. However, recent amendments to the U.S. Internal Revenue Code make it economically disadvantageous to continue to utilize debt financing to meet the capital requirements of Development Canada. This situation has arisen because, under those amendments, a foreign withholding tax imposed on interest payments by one member to another member of the same affiliated group of corporations that files U.S. consolidated returns is subject to a separate foreign tax credit limitation, which is computed on a consolidated basis. In the case of Columbia and Development Canada, the effect of this separate computation is that Columbia can no longer credit Canadian withholding tax on Development Canada's interest payment against Columbia's U.S. consolidated income tax liability irrespective of whether Development Canada generates taxable income for U.S. consolidated return purposes for the year or years in which such interest is paid and Canadian withholding tax is imposed. Therefore, it is proposed that the $55 million of Notes previously authorized be replaced with a like authorization for the issuance of Common.

Electec, Inc. (70-7610)

Electec, Inc. ("Electec"), One Poydras Plaza, 639 Loyola Avenue, New Orleans, Louisiana 70113, a nonutility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company,

has filed an application pursuant to sections 9(a) and 10 of the Act.

Electec proposes to enter into an agreement, with an initial eight-year term, with the Vosko Arkansas Joint Venture ("Joint Venture"), pursuant to which Electec will assign to the Joint Venture rights to process liquid hydrocarbons contained in a natural gas stream owned by Arkansas Power & Light Company ("AP&L"), a public - utility subsidiary of Middle South. AP&L will grant to Electec a limited right to process the natural gas purchased by AP&L from the McKamie Patton Unit A field in Miller County, Arkansas. The Joint Venture will gather and process the raw natural gas to eventually produce pipeline quality natural gas.

AP&L will provide Electec with the base load charge of raw natural gas to be processed by the Joint Venture. AP&L will receive back from Electec, at no cost, natural gas having an equivalent amount of Btu's as that which it provided to Electec. Any additional natural gas needed to satisfy this return requirement as a result of loss during processsing ("Make-up Btu's") will be provided to Electec by the Joint Venture at no cost to Electec.

In consideration for the processing rights to be granted by Electec, the Joint Venture will pay Electec an initial cash sum of $30,000. The Joint Venture will also pay Electec a monthly processing fee consisting of (1) four cents per gallon of liquid hydrocarbons extracted from the natural gas owned by AP&L, and (2) at least four cents per gallon of liquid hydrocarbons extracted from natural gas from other suppliers processed by the Joint Venture, to the extent that such gas is purchased by AP&L. Under the terms of the contract, Electec is guaranteed a minimum annual payment for processing fees of $200,000 (excluding in the first year, the initial $30,000 payment.) Electec will invest no funds in the Joint Venture and will not participate in the Joint Venture as an equity participant.

The benefits of the proposed transaction to AP&L include: (1) AP&L will be paid by Electec two cents per gallon of liquid hydrocarbons extracted from the gas, (2) AP&L will have an opportunity to acquire new supplies of gas to the extent the Joint Venture processes gas in excess of the gas provided by AP&L in order to provide the Make-up Btu's, and (3) the processed gas that AP&L receives from the Joint Venture can be used in more of AP&L's power plants as a result of the processing.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-7405 Filed 3-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26659; File No. SR-NSCC-89-3]

Self-Regulatory Organizations;

National Securities Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Expansion of NSCC's Automated Customer Account Transfer Services ("ACAT")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 8, 1989, 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 modify NSCC's Rules and Procedures.

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

(a) The primary purpose of the proposed rule change is to expand NSCC's Automated Customer Account Transfer Service ("ACAT Service") to include the transfer of customer account residual credit positions. Residual credits are assets in the form of cash or securities. The residual credits can result from dividends, interest payments, or other types of assets received by the Delivering firm after the transfer process is completed, or which were restricted from being included in the original transfer. (Residual debits are not eligible for transfer in this service).

Currently, there is not an efficient, uniform method for transferring residual credits. Certain firms have sweep systems which automatically review previously transferred accounts for the presence of residual positions. Depending on the sophistication of the system, this results in production of a check, or delivery bill or report which then requires a check to be issued or securities to be transferred. Other firms periodically review previously transferred accounts for the receipt of residual credits, or rely on customer inquiries or claim letters from the Receiving firm. In each case, checks or delivery of securities must be separately initiated or issued. This can result in lost or improperly routed checks and securities, as well as the expenses of postage and processing. The proposed Automated Customer Account Residual Credit Transfer Service would eliminate these impediments to transfer, and provide additional benefits.

The procedures for the transfer of residual credits would be the same as the procedures for the ACAT Service, except as follows: 1) The transfer of residual credits may only be initiated by the Delivering Member.

2) The request may only be initiated in automated form (either through CPU–CPU transmission or magnetic tape).

3) The Delivering Member's input is both the request and the details of the residual credits to be transferred.

The Receiving Member will still retain the ability to reject the residual credits or request adjustments to be made. Money settlement for credits will be processed along with the Member's ACATS money settlement obligations.

The proposed Customer Account Residual Credit Transfer Service will substantially decrease the risks, inefficiencies, and costs associated with the current practice of check issuance and initiation of securities deliveries. In addition, the Service will provide for the settlement and netting (to that the extent the assets are CNS eligible) of these assets along with the Member's other CNS obligations.

The proposed rule filing also makes a technical clarification to section 9 of Rule 50 for both the ACAT Service and residual credit transfer. The clarification specifies that a Receiving Member does not have an additional 2 day review process if adjustments are made by a Delivering Member on the second

business day after receipt by the Receiving Member of the report detailing the customer account asset data to an account containing options positions. While not previously specified in the rules, this limitation has been in existence since options were permitted to be transferred through the ACAT Service and is necessary due to the risk of delaying the transfer of options positions.

(b) Since the proposed rule change promotes the prompt and accurate clearance and settlement of securities transaction for which NSCC is responsible, it is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to 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

Comments on the proposed rule change have not been solicited or received. NSCC will notify Members of the rule change and solicit comments by an Important Notice. Members will be notified of the rule change by an Important Notice. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty 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 Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file 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 that are filed with 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 provisons 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 NSCC. All submissions should refer to NSCC–89–3 and should be submitted by April 19, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 22, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–7406 Filed 3–28–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 23, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Timeken Company
Common Stock, No Par Value (File No. 7–4299)

First Fidelity Bancorp
Common Stock, $1.00 Par Value (File No. 7–4300)

MGM–UA Communications Co.
Common Stock, $1.00 Par Value (File No. 7–4301)

IVAX Corporation
Common Stock, No Par Value (File No. 7–4302)

Diasonics, Inc.
Common Stock, No Par Value (File No. 7–4303)

Organagensis, Inc.
Common Stock, $.01 Par Value (File No. 7–4304)

Digital Communications Association
Common Stock, $.10 Par Value (File No. 7–4305)

Nova Corporation of Alberta
Common Stock, No Par Value (File No. 7–4306)

Millipóre Corporation
Common Stock, $1.00 Par Value (File No. 7–4307)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 13, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commissioin will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–7465 Filed 3–28–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Approval of Applicant as Mortgagee and Trustee

Notice is hereby given that Marine Midland Bank, National Association, with offices at 140 Broadway, New York, New York, has been approved as Mortgagee and Trustee pursuant to Pub. L. 100–710 and 46 CFR 221.43 and 221.51.

Dated: March 23, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89–7444 Filed 3–28–89; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 23, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by

calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0004.
Form Number: 7505 and 7505–A.
Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.
Title: Warehouse Withdrawal for Consumption.
Description: This document is necessary to fulfill Customs regulatory requirements, to provide an accounting method for recording each separate withdrawal, and to satisfy the cashier/liquidator/auditor/public receipt and documentary requirements.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,850.
Estimated Burden Hours Per Response/ Recordkeeping: 11 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 81,018 hours.
OMB Number: 1515–0005.
Form Number: 7512, 7512–A, 7512–B.
Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.
Title: Transportation Entry and Manifest Goods Subject to Customs Inspection and Permit.
Description: Customs Forms 7512 and 7512–A are used to document the transportation of merchandise in-bond, from the port of importation to another Customs port prior to final release from Customs custody. Customs Form 7512–B is used only for merchandise which is transiting Canada from point to point in the U.S., or the U.S. from point to point in Canada.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 10,000.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 140,000 hours.
OMB Number: 1515–0007.
Form Number: 7506.
Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.
Title: Warehouse Withdrawal Conditionally Free of Duty and Permit.
Description: This form is an application and permit to withdraw goods from a warehouse without paying duties and taxes. The form also covers several types of withdrawals from a Customs Bonded Warehouse, subject to Customs controls.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 73.
Estimated Burden Hours Per Response/ Recordkeeping: 50 hours 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 15,819 hours.
OMB Number: 1515–0065.
Form Number: 7501 and 7501–A.
Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.
Title: Entry Summary.
Description: The document is used by Customs as a record of the import transaction, to collect the proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies of Customs for statistical purposes.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2,675.
Estimated Burden Hours Per Response/ Recordkeeping: 225 hours 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 3,454,852 hours.
OMB Number: 1515–0069.
Form Number: 3461 and 3461 Alternate.
Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.
Title: Immediate Delivery Application.
Description: This form will be used by importers and brokers to provide Customs with the necessary information in order to examine and release imported cargo.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 6,100.
Estimated Burden Hours Per Response: 8 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 908,413 hours.
OMB Number: 1515–0075.
Form Number: 7512–C and 7512–D.
Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.
Title: Transportation Entry and Manifest of Goods, In-Bond Control Report.
Description: Customs Forms 7512–C and 7512–D are control cards used by importers, customshouse brokers, and carriers to show proof of delivery of merchandise entering the United States and being transported in-bond to another port of destination in the United States.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 10,000.
Estimated Burden Hours Per Response: 15 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,340 hours.

Clearance Officer: Dennis Dore (202) 566–7529, Paperwork Management Branch, U.S. Customs Service, Room 6311, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89–7382 Filed 3–28–89; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 59
Wednesday, March 29, 1989

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).

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: 6:00–9:30 p.m., April 18, 1989.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the January 23, 1989, Board Meeting
4. Board Audit Committee Report
5. Old Business
6. New Business

CONTACT PERSON FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, 703) 841–3812.

Date: March 22, 1989.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 89–7527 Filed 3–27–89; 11:56 am]

BILLING CODE 7025-01-M

Corrections

Federal Register
Vol. 54, No. 59
Wednesday, March 29, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 90369-9069]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 89-6473 beginning on page 11376 in the issue of Monday, March 20, 1989, make the following corrections:

§§ 611.93, 675.7, and 675.22 [Corrected]

1. On page 11380, in the second column, in amendatory instruction 2, in the fifth line, "effective June 13, 1989" should read, "effective March 15, 1989, until June 13, 1989". Also, the same correction should be made in the same column in amendatory instruction 4, beginning in the second line, and in amendatory instruction 5, in the second line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 546

Animal Drugs, Feeds, and Related Products; Tetracycline Hydrochloride Capsules

Correction

In rule document 89-6648 beginning on page 11698 in the issue of Wednesday, March 22, 1989, make the following correction:

§ 546.180a [Corrected]

On page 11698, in the third column, in amendatory instruction 2, the first line should read: "2. Section 546.180a *Tetracycline*".

BILLING CODE 1505-01-D

federal register

Wednesday
March 29, 1989

Part II

Environmental Protection Agency

40 CFR Parts 350, 355, 370, and 372
Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements; Implementation of Reporting Requirements for Indian Lands; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 350, 355, 370, and 372

[3491-7]

Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements; Implementation of Reporting Requirements for Indian Lands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA or Title III) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to establish reporting thresholds (i.e., quantities) for hazardous chemicals present at a facility below which facilities would not routinely have to comply with the reporting requirements specified in sections 311 and 312 of Title III. EPA previously established reporting thresholds for the first two years of reporting. EPA is today proposing reporting thresholds that would apply on or before October 17, 1989, for manufacturing facilities and September 24, 1990, for non-manufacturing facilities. These thresholds are as follows: For extremely hazardous substances (EHSs) designated under section 302 of Title III, the reporting threshold would be 500 pounds or the threshold planning quantity (TPQ), whichever is lower; for all other hazardous chemicals for which facilities are required to have or prepare a Material Safety Data Sheet, EPA is proposing a reporting threshold of 10,000 pounds. Reporting in accordance with these proposed thresholds would provide State and local governments with information on the hazardous chemicals EPA considers to be of particular concern, without overwhelming State and local agencies with excessive information. EPA is also clarifying the definition of "facility," proposing a minor change to the Tier I and Tier II forms, and proposing minor corrections and clarifications to the instructions that accompany the reporting forms under sections 311 and 312. In addition, EPA is correcting the listing for reportable quantities for two extremely hazardous substances under section 304, and clarifying the treatment of extremely hazardous substances in mixtures under sections 311 and 312. EPA is also proposing to clarify the implementation of Title III on Indian lands and specifying the emergency planning obligations under section 302 of tribal emergency response agencies, as well as the reporting obligations under sections 304, 311, 312, and 313 of owners and operators of facilities located on Indian lands.

DATES: Comments may be submitted on or before May 30, 1989.

ADDRESSES: Comments may be mailed or delivered to the Superfund Docket clerk, Attn: Docket Number 300RR-IF, Superfund Docket Room 2427 (OS-240), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please send four copies of comments. The docket is available for inspection by appointment between the hours of 9:00 am and 4:00 pm, 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, Project Officer, Preparedness Staff, Office of Solid Waste and Emergency Response, OS-120, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202; in Washington, DC, metro area and Alaska, (202) 479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline.

I. Introduction

A. Statutory Authority

These regulations are issued under sections 302, 304, 311, 312, 313, and 328 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99.499; 42 U.S.C. 11001 *et seq.*). Title III is the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

1. SARA

The Superfund Amendments and Reauthorization Act of 1986 (SARA) revises and extends the authorities established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Commonly known as "Superfund," CERCLA provides authority for Federal response action at certain sites where there is a release or threat of release of hazardous substances.

2. Title III

Title III establishes authorities for emergency planning and preparedness, emergency notification reporting, Community Right-to-Know reporting, and toxic chemical release reporting. Title III is intended to encourage and support State and local planning for emergencies caused by the release of hazardous chemicals and to provide citizens and governments with information concerning potential chemical hazards present in their communities. Title III is organized into three subtitles. Subtitle A establishes a framework for State and local emergency planning. Under section 301 of Subtitle A, States have established State Emergency Response Commissions (SERCs), which have, in turn, appointed Local Emergency Planning Committees (LEPCs). Section 302 requires EPA to designate Extremely Hazardous Substances (EHSs) and to establish threshold planning quantities (TPQs) for each EHS; to date, there are

366 designated EHSs listed in 40 CFR Part 355. Every facility where an EHS is present at or above its TPQ is required to notify the SERC and to cooperate with the LEPC in the planning process specified under section 303 of Title III.

Section 304 of Title III requires the owners or operators of facilities to notify the local emergency coordinator and any potentially affected State as soon as the owner or operator has knowledge of a release of an EHS or a CERCLA hazardous substance, if the release equals or exceeds a reportable quantity (RQ), or for those EHSs that have not been assigned an RQ, one pound.

Subtitle B of Title III provides a mechanism for public awareness of hazardous chemicals present in the community. Sections 311 and 312 of Title III are discussed in detail in the next section of this preamble. Section 313 requires facilities in Standard Industrial Classification (SIC) codes 20 through 39 (i.e., manufacturing facilities) to report total annual emissions of designated toxic chemicals that are manufactured, processed, or used at the facilities in quantities at or above certain thresholds. Subtitle C of Title III contains general provisions concerning trade secret protection, enforcement, citizen suits, and public availability of information.

C. Background of This Rulemaking

Section 311 of Title III applies to the owner or operator of a facility that has present hazardous chemicals for which the owner or operator must prepare or have available a Material Safety Data Sheet (MSDS) under the Hazard Communication Standard (HCS) regulations (29 CFR Part 1910) promulgated under the Occupational Safety and Health Act of 1970. Under section 311 of Title III, the owner or operator of a facility must submit individual MSDSs, or a list of chemicals for which the facility is required to have an MSDS, to the SERC, LEPC, and local fire department. The HCS does not list specific chemicals; a "hazardous chemical," as defined in the HCS regulations, is one that poses either a physical or health hazard. The tens of thousands of chemicals covered by the HCS include petroleum products, explosives, and carcinogens.

Title III (section 311(b)) states that the EPA Administrator may establish reporting thresholds (i.e., quantities of hazardous chemicals) such that if the hazardous chemical subject to the HCS is present at a facility in a quantity that is below the reporting threshold, the facility is not required to report the presence of that chemical under the provisions of sections 311 and 312 of Title III. On October 15, 1987, EPA promulgated regulations (52 FR 38334) establishing reporting thresholds under section 311(b) of Title III for facilities subject to the OSHA HCS regulations. The reporting threshold established for the first two years was 10,000 pounds, except for EHSs, which must be reported at the lower of 500 pounds or the TPQ. A threshold of zero is currently in effect for the third year of reporting, but EPA stated in 1987 that it intended to promulgate a non-zero threshold before the beginning of the third year of reporting. EPA also stated that facilities must provide information on chemicals present in quantities below the reporting threshold if the SERC, LEPC, or fire department requests such information. This provision applied to all facilities, even those not subject to routine reporting.

The HCS regulations were initially restricted to facilities in SIC codes 20 through 39, that is, the manufacturing sector. On August 24, 1987, however, the Occupational Safety and Health Administration (OSHA) revised the HCS rules to cover facilities in the non-manufacturing sector as well as facilities in the manufacturing sector (52 FR 51852). Several industrial groups challenged the revised standards, resulting in a temporary stay for non-manufacturing facilities. On July 22, 1988, OSHA clarified that the HCS was in effect for non-manufacturing facilities as of June 24, 1988, except for the construction industry (53 FR 27679). On February 15, 1989, OSHA advised that all provisions of the HCS were in effect for all segments of industry, including the construction industry, as of January 30, 1989 (54 FR 6886).

For facilities in SIC codes 20 through 39, the initial MSDSs or lists were required to be submitted to the appropriate SERC, LEPC, and fire department by October 17, 1987. Non-manufacturers were required to submit their MSDSs or lists by September 24, 1988 (i.e., three months after they became subject to the HCS rules, as specified in 40 CFR 370.20(b)). Facilities in the construction industry will be required to submit their MSDSs or lists by April 30, 1989. Thereafter, if a facility begins to use a chemical subject to the HCS regulations, in a quantity at or above the reporting threshold, or if a facility learns that its previously submitted MSDS is inaccurate for any reason, the facility must submit the new or corrected information within three months to the appropriate SERC, LEPC, and local fire department (40 CFR 370.21(c)).

Under section 312 of Title III, owners and operators covered by section 311 of Title III are required to submit additional information on the presence and location of hazardous chemicals at their facilities. Beginning March 1, 1988 for manufacturers, March 1, 1989 for non-manufacturers, March 1, 1990 for the construction industry, and annually thereafter, all facilities affected by the HCS regulations that have hazardous chemicals at or above the reporting thresholds must submit an inventory form containing an estimate of the maximum amount of the hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals present at the facility, and the location of these chemicals. The inventory forms must be submitted to the SERC, LEPC, and fire department.

Section 312 provides two "tiers" of information. All covered facilities must submit Tier I forms, which contain general information on the amount and location of hazardous chemicals by category; Tier I forms must be submitted annually. Tier II forms contain more detailed information on individual chemicals and must be submitted on request. Facilities may submit Tier II forms in lieu of Tier I forms.

As stated above, a threshold of zero pounds is currently in effect for the third year of reporting; that is, there would be no threshold as of the third year. For manufacturers, the third year of reporting begins on October 17, 1989; for non-manufacturers, the third year begins on September 24, 1990. EPA stated in the October 15, 1987 final rule, however, that it believed the balance of concerns about the information management burden on local communities "weighs in favor of a non-zero threshold," and that it would conduct further studies of alternative thresholds and propose a new final reporting threshold before the beginning of the third year of reporting. EPA is today proposing final reporting thresholds based on analyses conducted since the promulgation of the October 15, 1987 final rule. The analyses compared the effects of varying thresholds with criteria selected to address the intent of Congress when it enacted Title III.

On December 27, 1988 (53 FR 52273), the Office of Management and Budget (OMB) requested comment on whether the Underground Storage Tank (UST) notification form could be used as a substitute for section 311 and/or section 312 requirements by respondents with underground storage tanks. OMB is particularly interested in comments from the recipients of this information, i.e.,

SERCs, LEPCs, and local fire departments. Commenters may continue to submit comments on this issue to OMB at the address listed in the December 27, 1988 Federal Register notice or comments may be included with the submission on this proposed rulemaking.

II. Criteria for Selecting a Permanent Reporting Threshold

Congress enacted Title III to provide the public with information on hazardous chemicals present in their communities, thereby helping communities prepare for and respond to chemical emergencies. In addition, Congress clearly believed that the provision of information would lead to reductions of hazards in a community by creating public awareness and a community-industry dialogue. Early reports from SERCs and LEPCs indicate that both of these benefits of Title III are being realized.

Although LEPCs technically are required to plan only for emergencies at facilities with one or more of the 366 EHSs, rather than facilities handling any of the thousands of other chemicals identified through the sections 311 and 312 submissions, the inventory information provided under sections 311 and 312 plays an important role in a community's overall awareness of hazards and in its ability to respond appropriately and safely because of increased information about the hazardous chemicals present at a facility. Ideally, EPA would have liked to establish risk-based reporting thresholds that take into consideration the hazards posed by the chemicals, the potential for a significant release, and the potential exposure of surrounding populations. Given the tens of thousands of hazardous chemicals covered under sections 311 and 312, however, EPA determined that a chemical-specific approach simply was not feasible. In addition, EPA considered evaluating facility locations and potential population exposures around facilities that would be affected by different reporting thresholds. In this way, EPA hoped to understand how different thresholds might help to reduce risk in a community. EPA concluded, however, that because of the diverse locations of facilities in similar industries and the changing demographic distribution, such a risk-based approach was not feasible. Therefore, in considering possible final thresholds, EPA looked at three criteria for selecting a final reporting threshold or thresholds: (1) Information potential, (2) hazard identification, and (3) information management burden and cost.

A. Information Potential

In general, all else being equal, the optimal reporting threshold should provide information on as many facilities as possible. In this way, even if the responders lack information on the specific facility involved in an incident, information may be available on similar facilities or on the chemical of concern. This information may help responders determine the kinds of hazardous chemicals likely to be present at a facility and to identify the appropriate response to a specific chemical hazard.

If emergency responders lack information on the chemicals present at a facility, they may not be able to respond appropriately should a hazardous chemical incident occur. For example, when a fire started at a Springfield, Massachusetts warehouse containing chemicals used in swimming pools, the fire fighters were unsure of the chemicals and quantities present at the facility and, therefore, could not identify the appropriate chemicals to apply to the fire. The incident lasted three days and more than 25,000 people had to be evacuated from their homes.

B. Hazard Identification

One goal in selecting a final reporting threshold under sections 311 and 312 of Title III is to succeed in generating reports that can be used to identify hazards present in a community so that the public and industry can work together to reduce those hazards. Hazard reduction can take place through a number of mechanisms; for example, inventories can be reduced, safety practices at a facility can be improved, routing of vehicles carrying hazardous chemicals can be altered to avoid populated areas, and siting and zoning decisions can be modified to require and maintain buffer zones around facilities.

All other factors being equal, a reporting threshold should result in the submission of reports on the most toxic chemicals present in a community. When EPA adopted the 10,000 pound interim reporting threshold under sections 311 and 312, the Agency set a lower reporting threshold for EHSs because of their acute mammalian toxicity, that is, their ability to cause significant adverse effects on health with a brief one-time exposure. EPA explained: "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" (52 FR 38334, October 15, 1987).

The hazardous chemicals covered under the OSHA HCS (and, therefore, under Title III sections 311 and 312) pose a broad range of health and physical hazards. Some of the chemicals are life-threatening—for example, OSHA hazardous chemicals that are also EHSs and carcinogens—while other chemicals may cause relatively minor health problems. The HCS, however, does not distinguish among these different degrees of hazard.

C. Information Management and Cost Effectiveness

With every reduction in the reporting threshold, the number of facilities and the number of chemicals covered increases, as does the cost to both government and industry. Similarly, every increase in the threshold level reduces the number of reports filed, and thereby reduces the amount of information government and industry must manage. In its October 15, 1987 final rule, EPA stated that its primary concern was to "prevent State and local governments from being so overwhelmed with submissions under this program that effective public access and government use of information are not possible" (52 FR 38334). If the amount of information submitted is too great for the staff available in a community to organize into easily accessible files, the utility of all the information will be undercut. In adopting final reporting thresholds, therefore, EPA must balance the data management and cost burdens against the value of the information that would be lost or gained with a particular reporting threshold.

III. EPA's Approach

EPA undertook a two-phase study to determine appropriate thresholds: (1) An analysis of threshold effects, and (2) a study of the techniques SERCs, LEPCs, and fire departments are using to manage the data submitted under sections 311 and 312. This section describes both of these phases.

A. Analysis of Threshold Effects

EPA analyzed the potential effects of six threshold options that represent the range of reporting quantities EPA wanted to consider, as well as options for lowering reporting thresholds for chemicals included on certain lists (see section IV of this preamble for a discussion of the rationale for selecting the six options). For each option, EPA estimated the number of facilities in the U.S. that would be affected by a particular reporting threshold, the average number of chemicals that would

be reported per facility, the total number of reports that would be filed, the average pounds of chemicals reported per facility, and the total pounds of chemicals that would be reported in the U.S. The analysis also considered the number of chemicals EPA has designated as hazardous that would be reported under each threshold option, the incremental number of facilities and chemicals relative to the incremental cost at each lower threshold, and the total cost to facilities and to government. (For a discussion of the methods EPA used to evaluate the costs and cost increments, see section V of this preamble and the Regulatory Impact Analysis in Support of a Permanent Reporting Threshold under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (RIA), available in the docket.)

These national estimates were developed by extrapolating from data bases on the amounts of hazardous chemicals present at facilities in specific localities. The following criteria were used to select data bases from which to extrapolate: (1) The data base should include manufacturing and non-manufacturing industry groups potentially affected by sections 311 and 312; (2) the data base should not be biased toward facilities that differ significantly in size from the national norms; (3) the data base should contain enough information to determine threshold effects, including SIC codes, chemical identity, storage quantity of chemicals, and number of employees; and (4) the data should reflect reports of chemicals defined in a manner similar to the OSHA rules, without limit on quantity or toxicity.

EPA evaluated six data bases against these criteria, one each from Maryland, Michigan, New York, and Los Angeles, California, and two from New Jersey. Data bases from Los Angeles and from New Jersey (specifically, the New Jersey data based on reports filed under both the State and Federal Right-to-Know programs) best satisfied the criteria specified above. The other data bases covered only a limited number of the chemicals subject to section 311 and 312 requirements and represented non-manufacturers poorly. The lack of uniformity in covered chemicals and reporting thresholds among the data bases, as well as less than full compliance with the relevant reporting requirements, made it infeasible to consider combining their data. The Los Angeles and New Jersey Right-to-Know data bases, in contrast, were well-suited for the threshold analysis because they include information submitted by both manufacturing and non-manufacturing facilities, represent all size categories, and contain quantity information on hazardous chemicals at facilities covered by the HCS regulations. The Los Angeles data base, however, was not used to evaluate the zero pound threshold option because there did not appear to be an adequate representation of facilities reporting below the 500-pound California Right-to-Know reporting threshold. The New Jersey Right-to-Know data base did provide data on facilities at a zero threshold. Only the New Jersey data, therefore, were used in evaluating the effects of a zero reporting threshold. (For a full description of the selection of the data bases, see Chapter 2 in the RIA in support of this proposed rulemaking, available in the docket.)

B. Information Management Study

To analyze the impacts of the alternative thresholds on the information management capabilities of the recipients of section 311 and 312 reports, EPA conducted telephone interviews with 32 LEPCs, 12 SERCs, and 15 fire departments thought to have implemented effective information management systems or procedures, as well as with representatives of three environmental organizations. Through the interviews, EPA addressed topics identified in the preamble to the October 15, 1987, final rule as pertinent to the effectiveness of Federal reporting thresholds. These topics include 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, and the number and source of requests for additional facility information. The study was not designed to yield statistically valid findings and, therefore, the conclusions cannot be extended in any formal way to government entities as a whole. Nevertheless, a number of useful insights were obtained. (The full report on the information management study, "Information Management by State and Local Government Entities under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act," is available in the public docket.)

Among the key observations were that all of the SERCs and most of the LEPCs that have taken the lead in information management either have, or soon will have, adequate computer capabilities to store and retrieve electronically data from Right-to-Know submissions. Fewer fire departments have computer capabilities, but many have access to LEPC resources through their capacity as lead agencies for LEPCs. Nevertheless, even government entities with computers use only a fraction of their technological capabilities at present. The most common computer application is a log identifying facilities that have submitted information and the type of chemical information submitted (i.e., MSDSs, chemical list, Tier I form, or Tier II form). Although many LEPCs are beginning to use Right-to-Know information in the preparation of emergency plans or are making the information available to emergency responders, few such LEPCs have achieved their goals. Almost none of the government entities that were studied exercise quality control over the data submitted by facilities. Many facility reports, therefore, are filed or computerized with incomplete or obviously inaccurate information, such as improper chemical identifications or improbable inventory quantities.

Staffing, not technology, is the important constraint on the information management capabilities of government entities. Some government entities are using temporary employees or college interns to perform data entry. Others already have a data management staff to manage information submitted under State or local Right-to-Know laws similar to sections 311 and 312; however, few employees have the necessary background to review submissions for technical accuracy. Absence of qualified personnel, more than any other factor, accounts for the lack of quality control.

One reason that the data management burden has not overwhelmed most government entities to date is that rates of compliance with current Federal and State reporting requirements are estimated to be between 5 and 30 percent. In addition, non-manufacturing facilities, which far outnumber manufacturing facilities, will not submit section 312 reports until March 1989. Because the information management burden will increase as compliance rates improve and as the non-manufacturers begin submitting reports, many interview subjects expressed concern over the possibility that EPA would lower the reporting threshold and thus further increase the number of reports that must be handled; almost none felt confident that they could augment their staffs in response to a reduced Federal threshold.

LEPCs generally indicated that very few requests for information had been received from the general public, and that they have made very few requests of facilities for information below the

current threshold. Telephoned requests to SERCs and LEPCs for Right-to-Know information revealed that, although there are difficulties in handling requests for information from the public, many of the difficulties can be attributed to the newness of the program. For example, some State and local agencies cannot readily direct callers to the correct source of Right-to-Know information, either because lines of authority among jurisdictions are unclear or because the agency does not have an up-to-date roster of LEPC members. In a few LEPCs, time-consuming procedures have been implemented to protect the security of reporting facilities.

Several trends were noted that could imply improved information management in the future. First, increasing numbers of LEPCs and fire departments are negotiating cooperative agreements with neighboring jurisdictions or with the SERC to share information or information management responsibilities. Second, fee systems are being established in some States to raise funds for Title III implementation through fees on reporting facilities. Third, computer systems to aid in emergency planning are being used increasingly and could contribute to staff awareness and understanding of chemical hazards. To date, however, many SERCs, LEPCs, and fire departments are only beginning to tackle the information management challenges presented by Title III and, at best, have only an efficient system of logging information that enables them to locate information should a request be made. Most government entities do not have a system that enables them to retrieve information efficiently for use in emergency responses or to organize information for emergency planning purposes.

IV. Discussion of the Proposed Rule

A. Reporting Thresholds

EPA considered six options in analyzing potential reporting thresholds. The options selected for analysis are representative of the full range of possible thresholds; they represent points along a continuum of possibilities from less inclusive to very inclusive. The six particular options were chosen because they allowed EPA to isolate the effects of varying threshold levels on each of three factors: (1) The number and type of chemicals that would be reported; (2) the number of facilities that would be required to report; and (3) the volume of chemicals that would be covered. Because different thresholds could be set for different classes of chemicals or even for individual chemicals, a large number of combinations of these factors are possible; for reasons of practicality, EPA analyzed six options because they set bounds on the reasonable possibilities.

Option 1 would set a 50,000 pound reporting threshold for HCS chemicals except EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 2 would adopt the current reporting thresholds—10,000 pounds for HCS chemicals except EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 3 would set a 10,000 pound reporting threshold for HCS chemicals, except for hazardous substances defined under section 101(14) of CERCLA and toxic chemicals designated under section 313 of Title III, which would have a reporting threshold of 500 pounds, and EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 4 would set a 2,000 pound reporting threshold for HCS chemicals, except for hazardous substances designated under section 101(14) of CERCLA and toxic chemicals designated under section 313 of Title III, which would have a reporting threshold of 500 pounds, and EHSs, which would have a reporting threshold of 500 pounds or the TPQ, whichever is lower.

Option 5 would set the reporting threshold at 500 pounds for all covered chemicals.

Option 6 would set the reporting threshold at zero pounds for all covered chemicals.

EPA is proposing Option 2, that is, to retain the reporting thresholds that have been applied in the first two reporting years (a 10,000 pound reporting threshold for most hazardous chemicals; the reporting threshold for EHSs at 500 pounds or the TPQ, whichever is lower).

As noted above, in evaluating the effects of the options, EPA was particularly concerned about the possibility that the information provided might be so voluminous that SERCs, LEPCs, and fire departments would be overwhelmed. The extension of the HCS rules to facilities in the nonmanufacturing sector has greatly increased the number of facilities reporting under the current thresholds. In addition, as facilities become familiar with Title III and, therefore, compliance rates increase, the amount of information submitted is likely to rise. Any option that results in further substantial increases in the amount of information could be counterproductive.

A second important consideration in evaluating the effects of the options was costs and the value of additional information provided under each of the alternative thresholds. The table below shows the estimated number of facilities that would be affected, the estimated number of reports that would be filed, the pounds of chemicals that would be reported, and the annual costs (in 1987 dollars) that would be incurred nationally under each of the six threshold options. Because the data were derived from two data bases, ranges are given for each option except Option 6; only the New Jersey Right-to-Know data were used to estimate the zero option figures and, therefore, only a single estimate is given for Option 6. The ranges represent the estimates derived from the Los Angeles and New Jersey data bases; because one data base was not consistently higher than the other, the source of the higher and lower estimates varies.

Effects of alternative reporting thresholds	Option			
	Estimated number of facilities affected (thousands)	Estimated number of chemicals reported (millions)	Estimated quantity of chemicals represented (billion pounds)	Total annual costs (million dollars)
1	246–306	0.8–1.3	307–495	49–63
2	291–391	1.0–2.2	314–516	54–76
3	374–487	1.9–3.2	315–520	83–111
4	435–555	2.7–4.5	320–525	102–133

Effects of alternative reporting thresholds	Option			
	Estimated number of facilities affected (thousands)	Estimated number of chemicals reported (millions)	Estimated quantity of chemicals represented (billion pounds)	Total annual costs (million dollars)
5	488–653	4.3–6.6	320–528	116–166
6 [1]	589	11.3	321	153

[1] Because two data bases were used to develop the estimates for Options 1 through 5, EPA has more confidence in the estimates for those five options than in the estimate provided for Option 6, which is derived from the NJ data base alone.

Option 2, the proposed reporting threshold, is estimated to affect between 291,000 and 391,000 facilities at an annual cost that ranges from $54 million to $76 million. Selection of Option 2 is expected to result in between 1.0 million to 2.2 million reports on hazardous chemicals. The difference between Option 2 and Option 5, in terms of percentage of the total pounds of hazardous chemicals covered, is only two percentage points, but Option 5 (a 500 pound reporting threshold for all hazardous chemicals) would cost more than twice as much as Option 2.

It should be noted that at any of the thresholds considered, petroleum products form a substantial majority of the pounds of substances subject to reporting, and facilities involved in the production, distribution, and use of such products would be a sizeable fraction of the reporting facilities. No reporting threshold considered would change the emphasis on reports from facilities with petroleum products. EPA welcomes comments on this issue and on the analytical approach used, with the aim of focusing attention on chemicals of higher toxicity rather than substances (such as petroleum) that are of concern principally because they represent fire and explosion hazards.

EPA examined how likely the threshold options would require reports from facilities similar to those associated with a sample of 281 serious accidental releases (i.e., those releases resulting in reported human casualties and with estimates of quantities released). EPA estimated whether a facility involved in such a release would have been likely to have exceeded the inventory thresholds under Options 1 through 5 for the substances released. (At Option 6, the zero threshold would cover 100 percent of fixed facilities.) At Option 2, facilities and chemicals subject to reporting would account for about two-thirds of this sample of events, and about three-quarters of the number of people reported injured. Facilities and chemicals subject to reporting under Option 1 would account for about 60 percent of these serious events and two-thirds of the number reported injured. Options 3, 4, and 5 each had about the same coverage—about 80 percent of the serious events and 90 percent of the reported injuries.

EPA believes that the proposed reporting thresholds represented by Option 2 will provide State and local governments with information on the most hazardous chemicals present in their communities without overwhelming communities with information and without imposing unreasonable costs on facilities affected by the reporting requirements. The information management study conducted in support of this rulemaking and other contacts with SERCs and LEPCs indicate that many communities already have chosen to focus their efforts on EHSs rather than on the full range of hazardous chemicals. The proposed thresholds would help communities manage the data by providing information on the EHSs and limiting information on the other HCS chemicals to those that are present in bulk. In addition, facilities and communities are familiar with the proposed reporting thresholds because they are the same as those currently in effect. They have conducted analyses based on these thresholds and know what hazardous chemicals are covered by the reporting requirements. Finally, communities always retain the right to request MSDSs and inventory forms on chemicals present at levels below the reporting thresholds. Having a simple reporting trigger at the national level and retaining flexibility at the State and local level imposes no additional burden nationally, but allows State and local governments to respond to their own local needs.

Although Option 1 would create less of a data management burden on industry and communities and still would identify most of the hazardous chemicals present in bulk. EPA rejected Option 1 because it would decrease the amount of information available to local communities. Between 45,000 and 85,000 facilities covered under the current reporting thresholds would not be required to report routinely under Option 1. Further, the first-year costs under Option 1 are greater than under Option 2 because facilities would have to reexamine their chemical inventories to determine if they would be affected by the higher reporting thresholds; such an extensive reexamination would not be required under Option 2 because it is identical to the current reporting thresholds. EPA assumes maximum inventory levels are relatively stable.

Options 3 and 4 were developed to reflect special treatment for chemicals other than EHSs on lists referenced by Title III because EPA and communities are also concerned about hazards other than acute toxicity, which is currently the principal basis for designating EHSs. Under section 304 of Title III, facilities must report releases of the 719 CERCLA hazardous substances when the releases exceed the reportable quantity (RQ); information on these substances may be of interest to the community for planning purposes. Manufacturers are required to report total annual releases of over 300 toxic chemicals under section 313 of Title III. RQs are generally lower than 500 pounds; the section 313 thresholds are at least 10,000 pounds. EPA selected a 500-pound reporting threshold for the CERCLA hazardous substances and section 313 toxic chemicals in Options 3 and 4 because it allowed the Agency to isolate the effects of extending lower reporting thresholds to these chemical lists. Option 3, in particular, focuses attention on the effects of applying a lower threshold to those hazardous chemicals specifically referenced under Title III because that option retains the current reporting thresholds for HCS chemicals not specifically listed.

EPA rejected Options 3, 4, and 5 because they would result in a significant increase in the cost to

industry and in the information management burden on SERCs, LEPCs, and fire departments, without generating a commensurate increase in valuable information. Option 3 would result in annual costs that are about 50 percent higher than those under Option 2 and would require SERCs, LEPCs, and fire departments to handle a million additional reports on hazardous chemicals from more than 83,000 additional facilities. The costs of Option 3 are estimated to be between $83 million and $111 million annually. The additional benefits derived from the increased volume of information generated by Option 3 did not appear to be sufficient to justify the imposition of such a large annual cost on society. Further, EPA believes that Option 3 could increase the information management burden to the point where many communities would not be able to use the information effectively. Having different lists of chemicals with lower reporting thresholds, as Options 3 and 4 both would do, also could be confusing, adding to the administrative burden of the regulation.

EPA recognizes that both Options 4 and 5 would use easily applied measures: 2,000 pounds is the approximate equivalent of a pallet containing four drums—a common storage and purchase measure—and 500 pounds is the approximate equivalent of a single, 55-gallon drum. In the October 15, 1987 final rule, EPA discussed the 500-pound option as the most likely final threshold. Many State and local governments that have local Right-to-Know laws use a 500-pound threshold. Most of these governments, however, apply the threshold to a limited number of chemicals and exempt certain classes of facilities, which greatly reduces the management burden that the 500-pound threshold imposes on these communities. As indicated in the table above, the 500-pound threshold applied to all HCS hazardous chemicals would result in more than twice the annual costs imposed by the selected option, and the filing of 4.3 million to 6.6 million reports, a three-fold increase over the number of reports submitted under Option 2, while increasing the percentage of total pounds of hazardous chemicals covered only marginally. Given these increases in the information management burden and in costs, EPA decided that a 500-pound reporting threshold was not feasible. States and communities, however, retain the right to impose a 500-pound threshold or any lower threshold in their jurisdiction.

Although the default option under the current rule is a zero threshold—that is, no threshold for reporting—EPA has opposed letting the threshold drop to zero, an option also strongly opposed by some State and local officials. It is estimated that more than 589,000 facilities would be required to report under this option, versus approximately 291,000 to 391,000 under the proposed option, and that facilities would report on an average of 19 chemicals, versus three under the proposed option. The annual total cost would be close to three times as high as under the proposed option. (For a complete analysis of the options considered and their effects, see the RIA supporting this proposed rulemaking, available in the docket.)

After selecting Option 2, EPA also considered eliminating the 500-pound threshold for EHSs; that is, facilities would be required to report under sections 311 and 312 if EHSs were present at the facility in quantities greater than or equal to the TPQ. This change would raise the reporting threshold for EHSs with TPQs greater than 500 pounds (the highest TPQ is 10,000 pounds).

EPA originally established a 500-pound threshold for EHSs under sections 311 and 312 because the Agency believed at the time that 500 pounds would be the permanent reporting threshold for all hazardous chemicals. The Agency believed that because EHSs were of particular concern, reporting of EHSs should not be subject to phase-in (52 FR, 38344, 38352, October 15, 1987). In light of the proposed selection of Option 2 as the permanent reporting threshold, however, EPA reconsidered the special treatment of EHSs with higher TPQs. EPA decided to retain the current reporting thresholds for EHSs (i.e., the TPQ or 500 pounds, whichever is lower) for two reasons. First, facilities, SERCs, LEPCs, and fire departments are familiar with these reporting thresholds. To change the rules at this time would add unnecessary confusion to an already complicated process. Second, in reviewing releases reported in the Acute Hazardous Events data base, a data base that contains information on releases reported to the National Response Center that have resulted in deaths or injuries, EPA found that more than half of those releases involved EHSs; some of the releases involved quantities below the TPQ. EPA decided, therefore, that EHSs continued to warrant special attention and lower reporting thresholds.

EPA solicits comments on the proposed reporting thresholds as well as on the other options discussed above. The Agency specifically requests comments on three issues: (1) The selected option and any other options that might be considered; (2) whether the reporting threshold for EHSs should be the TPQ or 500 pounds, as proposed, or simply the TPQ; and (3) whether to establish a specific reporting threshold of less than 10,000 pounds for chemicals on lists other than the EHS list.

B. Other Changes

1. Multi-establishment Facility Reporting

EPA has identified an apparent inconsistency between regulations implementing section 313 of Title III (40 CFR Part 372) and those implementing sections 302, 304, 311, and 312 of the Act (40 CFR Parts 355, 370). Final regulations promulgated on February 16, 1988 (53 FR 4500) under section 313 of Title III provide for special reporting by multi-establishment facilities. To be as consistent as possible across all provisions of Title III, the Agency is today proposing amendments to 40 CFR 355.20, 355.30, 355.40, 370.2, 370.21, and 370.25 that would apply several of these same special reporting requirements for multi-establishment facilities reporting under sections 302, 304, 311, and 312 of the Act.

In the February 16, 1988 final rule implementing section 313 reporting, the Agency identified several situations involving multi-establishment facilities that merit special reporting provisions. By "multi-establishment," the Agency means a facility consisting of more than one "establishment." A definition of "establishment," already included in 40 CFR 372.3, is included in today's proposed rule. Under this definition, an establishment would be defined as "an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed."

In the first identified situation, a multi-establishment facility is owned by the same parent company. Because different establishments may have totally separate lines of authority, it may be difficult to combine information into one reporting form. Thus, the Agency has determined that it may be desirable for each establishment to submit separate reports under the regulatory provisions implementing sections 302, 304, 311, and 312. Today the Agency is proposing that this be permissible as long as the entire facility as a single unit (all establishments combined) is used as the basis for determining compliance. The Agency would thereby ensure that no reporting will be missed because each facility must aggregate quantity among each of its establishments to determine compliance; reporting will

occur regardless of whether certain individual establishments do not have present the threshold amount of certain chemicals that trigger the reporting requirements. Two check boxes have been added to the Tier I and Tier II forms to indicate whether the form represents the chemicals present at the entire facility or only those chemicals present at one establishment within a facility owned and operated by a parent company.

Unlike a multi-establishment facility that is owned or operated by a single parent company, in the second situation, a multi-establishment facility, such as an industrial park, may contain establishments with no common corporate or business interest. In such a situation, no one person may be in a position to know all of the information necessary to make a determination of whether the facility as a whole is subject to reporting under sections 302, 304, 311, and 312, or to file the actual reports required by these provisions and the implementing regulations.

Accordingly, in conformity with the reporting requirements under section 313 of Title III, EPA has determined that each owner or operator of an establishment in a multi-establishment facility that is not owned or operated by a single parent company should treat the establishment(s) that it operates as a separate facility for the purposes of reporting. Therefore, under section 302 and its implementing regulations (40 CFR Part 355), each such establishment should determine whether it has present a threshold planning quantity of an EHS to determine whether it should notify the SERC or LEPC that it is subject to the planning provisions of the Act. To determine whether it should comply with the reporting requirements under sections 311 and 312 and their implementing regulations (40 CFR Part 370), each such establishment should determine whether it has present a threshold reporting quantity of a hazardous chemical for which the owner or operator of such establishment has an MSDS. Appropriate provisions would be added to the rule in §§ 355.30, 355.40, 370.21, and 370.25 and to the Tier I and Tier II form and instructions to provide for this approach. To ensure that related companies do not avoid reporting under this provision, EPA is proposing that this reporting approach be limited to operators of separate establishments in the same facility that do not have any common corporate or business interest, i.e., they are not engaged in partnerships, joint ventures, ownership of a controlling interest in one by the other, or ownership of a controlling interest in both by a third person.

2. Subsurface Operations.

Since the Agency promulgated regulations under Title III, many questions have arisen concerning the applicability of those regulations to subsurface operations. The questions relate to the meaning of the phrase "present at a facility" in the emergency planning notification provisions in section 302 of Title III and 40 CFR 355.40, and the phrases used in the emergency release notification provisions, that is, "occur from a facility" in section 304 of Title III, and any facility * * * at which there is a release" in 40 CFR 355.40. The confusion surrounds the reporting requirements that would apply to owners and operators of facilities that extract subsurface minerals or conduct other subsurface operations (e.g., mines or wells), if EHSs or other hazardous chemicals are present in their natural state in quantities that equal or exceed the threshold reporting quantities. EPA does not interpret Title III to require notification of EHSs or other hazardous chemicals that are present in their natural state in subsurface locations, so long as they are not being used or disturbed by human activity as discussed below.

Title III requires notification for EHSs and other hazardous chemicals "present" at a "facility" above certain reporting quantities. The Agency proposes to interpret the definition of "facility" to include all man-made structures (e.g., buildings, equipment), as well as all natural structures (e.g., underground salt domes, caverns, geological strata), into which an EHS or other hazardous chemical has been purposefully introduced or placed, or from which it is being removed, through man-made equipment or other human means, such that it functions as a containment structure for human uses. EPA is proposing changes to the definition of "facility" in §§ 350.1, 355.20, 370.2, and 372.3 to reflect this interpretation.

Under this interpretation, hazardous chemicals occurring naturally in situ would not be "present at the facility" provided they are not being used (e.g., mined). If, however, a hazardous chemical in an amount that equals or exceeds the reporting threshold (e.g., a TPQ of an EHS) is being used or removed, the substance must be reported under section 302 of Title III and 40 CFR 355.30. In addition, if a hazardous chemical is located beneath the surface of a site having been at one time placed there through human means (e.g., in a natural structure such as a salt dome) where it was held for human use, the chemical must be reported under section 302 of Title III and 40 CFR 355.30.

The Agency is also today clarifying when a release of an EHS or a CERCLA hazardous substance from a subsurface location must be reported under Title III section 304 and 40 CFR 355.40. A release of a reportable quantity (RQ) of an EHS or CERCLA hazardous substance from a location where it exists in its natural state need not be reported. If, however, the same substance was placed in the subsurface location through man-made means or is being removed by human intervention, a release of that substance (purposefully or accidentally) is subject to the reporting requirements of Title III.

3. Treatment of Mixtures in Reporting Threshold Calculations

Since the Agency promulgated the final rule on sections 311 and 312, questions have arisen concerning the relationship between thresholds and the policy of allowing a facility to report on either the hazardous components of a mixture or on the mixture as a whole for purposes of section 311 and 312 reporting. In some instances, reporting by hazardous components would decrease the amount of reporting because the components may not be present in threshold quantities while the amount of the mixture may reach the applicable threshold. EPA is proposing to add § 370.28(b)(3) to clarify that if mixtures at a facility contain EHSs, the mixture(s) or the EHS component must be reported when the threshold value for that EHS is reached. Quantities of each EHS must be aggregated to determine if the quantity at the facility exceeds the reporting threshold. Facilities have the option, however, of reporting on the component or the mixture itself, even if the amount of the mixture is below 10,000 pounds. If the hazardous chemical involved is not an EHS, the facility need not aggregate the amounts in mixtures. This will allow State and local entities to receive necessary information on EHSs, those hazardous chemicals that are integral to the emergency planning process.

4. Reportable Quantities for Hydrogen Chloride and Methacrylonitrile

There is presently a discrepancy between Appendices A and B to 40 CFR Part 355 (EHS list) and 40 CFR 302.4 (CERCLA list) with respect to the reportable quantities (RQs) for hydrogen chloride and hydrochloric acid (both of which have CAS #7647-01-0) as well as the RQs for methacrylonitrile. The EHS

list indicates that the RQ for hydrogen chloride (gas only) is one pound. The CERCLA list sets the RQ for hydrochloric acid as 5,000 pounds. Because the substances have the same CAS number, they should have the same RQ of 5,000 pounds. Similarly, the RQ for methacrylonitrile on the EHS list is one pound and on the CERCLA list is 1,000 pounds. EPA is proposing to correct the EHS list to show RQs of 5,000 pounds and 1,000 pounds for hydrogen chloride and methacrylonitrile, respectively. EPA has proposed (54 FR 3388, January 23, 1989) to designate all EHSs as CERCLA hazardous substances and is scheduled to propose adjustments to the RQs for those substances in the spring of 1989. The RQs for hydrogen chloride and methacrylonitrile are subject to adjustment in that rulemaking.

5. Clarifications of the Reporting Forms

EPA is proposing editorial corrections and clarifications to the Tier I and Tier II reporting forms and instructions. The change to the forms would provide a box for a facility to check if the form was identical to information provided in the previous reporting year and two boxes to indicate whether the form represents the chemicals present at the entire facility or only those present at one establishment. This information will help LEPCs and SERCs to manage the information submitted.

6. The Implementation of Title III by Indian Tribes on Indian Lands

Although Title III lacks an explicit reference to Indian tribes or to the implementation of the Act on Indian lands, Congress clearly intended that the protections of Title III apply to all persons inhabiting Indian lands. This intent is demonstrated in the language and legislative history of the statute, in which members of Congress voiced their understanding that Title III would apply to all persons in all areas of the nation. Section 329 of the Act makes clear that Title III applies to the entire geographic extent of the nation. In addition, congressional proceedings make plain Congress' intent that Title III's protections apply to all United States citizens living in every community within the United States. For example, during floor debate in the House of Representatives, the Act was described as "[e]stablishing a program to ensure citizens have access to information about chemical substances that are being used in their communities." 132 Cong. Rec. H9563 (daily ed. Oct. 8, 1986) (statement of Rep. Dingell). More explicit were the statements of one legislator that SARA has "an extensive community right-to-know provision that guarantees the Federal right-to-know in every community * * *. Furthermore, it also guarantees that every community in this country will have emergency response plans that will help them should there ever be a toxic emergency." *Id.* at H9569 (statement of Rep. Wise). *See also id.* at H9593 (statement of Rep. Sikorski that Title III would apply to all "Americans"). Title III was intended to provide needed information on hazardous chemicals as well as how to respond to a chemical emergency. Thus, Title III applies to Indians and on Indian lands. This interpretation of the statute is furthermore consistent with the general presumption that when Congress enacts a general statute applying to all persons, it intends that the Act apply to Indians and their property interests.

While clearly meaning to apply to persons located on Indian lands, the statute designates bodies of State officials, namely the Governor-appointed State emergency response commission (SERC) and the SERC-appointed local emergency planning committees (LEPCs), as the authorities responsible for implementing the Act.[2] Thus under section 303 of Title III, LEPCs must prepare comprehensive emergency response plans for each local emergency planning district. LEPCs, SERCs and local fire departments must collect and make publicly available notifications and reports under sections 302, 304, 311 and 312. Finally, an entity designated by the Governor must receive toxic chemical release inventory forms under section 313 of the statute. It is important to note that while the federal government retains an oversight role in the administration of the statute (e.g., designating the hazardous chemicals to be reported, setting chemical reporting thresholds, determining claims of trade secrecy), the law is primarily implemented at the State and local level. It is State and local authorities who receive notifications and reports that inform local emergency response planning efforts and the public exchange of information, and it is the local authorities that actually develop the contingency plans.

States, however, are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it. *Bryan v. Itasca County*, 426 U.S. 373, 376 n.2 (1976); *Washington v. Environmental Protection Agency* 752 F.2d 1465, 1469-70 (9th Cir. 1985). This rule is derived from the plenary authority of Congress in the area of Indian affairs, the Federal trust responsibility toward Indian tribes, and tribal sovereignty and self-government. *Washington v. Environmental Protection Agency*, 752 F.2d at 1470. This respect is based upon a recognition that Indian tribes retain " 'attributes of sovereignty over both their members and their territory,' " which are "reflected and encouraged in a number of congressional enactments demonstrating a firm Federal policy of promoting tribal self-sufficiency and economic development." *White Mountain Apache Tribe v Bracker*, 448 U.S. 136, 142-44 (1980). The Supreme Court has stated that "[a]mbiguities in Federal law have been construed generously in order to comport with these traditional notions of sovereignty and with the Federal policy of encouraging tribal independence." *Id. See also California v. Cabazon Band of Mission Indians*, 107 S.Ct. 1083, 1092 (1987). The EPA Policy for the Administration of Environmental Programs on Indian Reservations recognizes this sovereignty by committing the Agency to working with tribes on a "government-to-government" basis for purposes of regulating the reservation environment.

Nothing in the language or legislative history of Title III would suggest Congress intended to subject Indian tribes to state regulation on Indian lands, especially in an area of such extreme importance to the health, safety and welfare of the Indian community as chemical emergency response planning. *See Nance* v. *Environmental Protection Agency*, 645 F.2d 701, 714 (9th Cir. 1981). In *Nance*, the United States Court of Appeals for the Ninth Circuit upheld EPA's decision that, under the Clean Air Act Tribes, not states, should regulate air quality on Indian lands, notwithstanding that the Act provided only for state, and not for tribal, regulation of air quality. The court rejected the Petitioner's argument that section 107(a) of the Clean Air Act, delegating to each State "the primary responsibility for assuring air quality within the entire geographic area comprising such State" prevented EPA from authorizing Indian tribes to control air quality standards within their Indian reservations. The court stated that the Clean Air Act did not constitute the requisite clear expression of Congressional intent to subordinate

[2] Section 329(9) of SARA Title III defines the term "State" to mean "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."

tribes to state decisionmaking on reservation air quality. *Nance*, 645 F.2d at 714.

This presumption against State jurisdiction over Indians on Indian lands constitutes an obstacle not only to recognizing States as the relevant Title III implementing authority for Indians on Indian lands, but as the relevant Title III implementing authority on Indian lands generally. The requirements of an effective Title III program indicate that Congress intended that only one governing authority implement the program within a given area. Implementation of Title III by more than one governing authority would be unwieldy and contrary to the dictates of local emergency response planning. For example, under section 303 of the Act, LEPCs must prepare a plan for their emergency planning district that, among other things, identifies the facilities subject to Title III's planning requirements, the routes used for transportation of extremely hazardous substances, and provisions for precautionary evacuation and alternative traffic routes. The preparation of two emergency response plans, one for Indian facilities and one for non-Indian facilities would present obvious problems. Without knowledge of which neighboring non-Indian facilities were subject to the Title III planning provisions or the routes used to transport extremely hazardous substances to those facilities, the authorities to which the Indian facilities would report could not choose appropriate evacuation procedures or alternative traffic routes in case of an emergency. Even in situations where Indian and Indian facilities are located in separate areas of the reservation, implementation of Title III by two governing entities would hinder effective planning. Under section 303(e) of Title III, the SERC must review the plan prepared by each LEPC "to ensure coordination of such plan with emergency response plans of other emergency planning districts." Where implementation on a given reservation is split between two authorities, such coordination could not be assured. In summary, because Congress envisioned effective and comprehensive emergency response planning under Title III, it is reasonable to interpret the statute to as contemplating only one governing authority implementing the Act within a single geographic area.

On the other hand, Indian Tribes generally appear to have sufficient civil regulatory authority over Indians and non-Indians on Indian lands to fully implement the requirements of Title III. Tribal governing bodies clearly possess the powers necessary to carry out Title III's authorities with regard to their own tribal members. Furthermore, the Agency believes that Tribes generally possess the requisite authority to implement Title III over non-Indians located on Indian lands. This is because Title III addresses the threat of hazardous chemical accidents on Indian lands, an issue of fundamental importance to the health and welfare of the tribe and over which the tribe retains inherent power to exercise civil authority with regard to the conduct of non-Indians on fee lands within its reservation. *Montana* v. *United States*, 450 U.S. 544, 566 (1981). It is important to keep in mind that Title III is not a rigorous regulatory program. Federally recognized Indian tribes have the requisite authority necessary to implement an effective Title III program. These are basically the authority to receive and disseminate information on hazardous chemicals submitted to tribal authorities and the authority to plan for emergency response measures in the case of an accidental release of hazardous chemicals.

The nature of effective local emergency response planning suggests that the tribe is the preferable authority to implement the statute on Indian lands. Title III requires the development of a decentralized infrastructure to increase local awareness of the hazardous substances present in the community and to foster attempts to plan, also at the community level, to avert the risks posed by those hazardous substances. To be consistent with these overall purposes, the governing authority implementing Title III should be that governing body responsible for the health, safety and welfare of the jurisdiction on a day-to-day basis. On Indian lands, that responsibility lies with the tribal government.

Thus, because the statute does not evince a clear intent that States implement the Act's requirements on Indian lands, EPA believes that the question of who should implement the statute is one left to its own sound judgment. Therefore, EPA is today proposing that Indian tribes be the designated implementing authority for Title III on all lands within "Indian country" as specifically defined below.[3]

EPA proposes that the tribes be subject to the same Title III requirements in Indian country as the State governor, SERC and LEPC within States generally. EPA is thus proposing regulatory amendments to the definitions contained in 40 CFR §§ 350.1, 355.20, 370.2, 372.3 to clarify that where the facility is located within Indian country, the state emergency response commission and local emergency planning committee shall be that entity designated by the Chief Executive Officer of the Tribe or, where the tribe and the State have entered into a cooperative agreement, the entity designated in the cooperative agreement. The regulations have also been amended to add a definition of "Indian Tribe," "Chief Executive Officer of the Tribe" and "Indian Country." The definition of "Indian Country" is that currently found in 18 U.S.C. 1151. Finally, the language of § 372.30 has been amended to clarify that a covered facility located in Indian country must submit a completed EPA Form R to the official designated by the Chief Executive Officer of the Tribe, or where a cooperative agreement exists, the official designated in the cooperative agreement.

Under these proposed regulatory amendments, the tribe will have the sole authority to implement Title III within Indian Country, regardless of whether the facilities there located are owned or operated by Indians or non-Indians. Under the Federal statutory definition of "Indian Country," included in today's regulations, lands falling under the proposed tribal Title III jurisdiction include all lands within the limits of any Indian reservation, all dependent Indian communities, and all Indian allotments. Accordingly, the Chief Executive Officer of the Tribe would be responsible for the functions of the State Governor under section 301 of the Act, which includes appointing an emergency response commission for the tribe. This tribal commission would then be responsible for carrying out the duties of the SERC, among them being the designation of local emergency planning districts and the appointment of an emergency planning committee for each district. This committee would carry out the same functions as does an LEPC in the local emergency planning districts designated by the SERC. Finally, EPA is proposing that for facilities located within Indian Country the fire department run by the tribe be the fire department designated under the statute for the purposes of receiving section 311 and 312 reports. Section 313 of Title III requires that the State governor

[3] In interpreting Title III not to authorize states to administer the statute for Indians on Indian lands, it is important to note that the Agency is taking no position as to whether a state may have independent grounds for subjecting Indians on Indian lands to State emergency response planning laws similar to Title III. *Compare Bracker*, 448 U.S. at 144.

designate an entity to be responsible for managing toxic release inventory data. In Indian country, this entity would be designated by the chief executive officer of the applicable Indian tribe.

EPA notes that any tribe may enter into a cooperative agreement with the State(s) within which its lands are located to allow the State to carry out the statute. Indian tribes may also enter into cooperative agreements with each other to achieve a workable Title III program. The Agency wishes to emphasize that tribes and States may tailor any cooperative agreement to which they are a party to their particular needs. Thus, a tribe might arrange for a State to implement some, but not all, of Title III's requirements. For example, a tribe might not have the current capacity to manage toxic chemical release inventory data. Further, a State might be very interested in managing such data from all facilities within its boundaries, including facilities located within Indian Country. Thus, a tribe and a State might enter into a cooperative agreement under which the State receives the toxic chemical release inventory forms filed by facilities under section 313 of the law and EPA's implementing regulations. Similarly, a tribe might limit the life of a cooperative agreement to one year such that it must be renewed annually in order for the State to continue implementing the various Title III tasks to which it has agreed to implement.

Finally, EPA wishes to emphasize that cooperation and open communication between the tribal and the State and local authorities is crucial to effective regional emergency response planning. EPA encourages such cooperation and communication through voluntary efforts by all three entities. To foster such efforts and to ensure that the public is adequately notified of State/Tribal arrangements that might affect reporting obligations, EPA is soliciting comment on whether the Agency should institute a formal procedural mechanism relating to such cooperative efforts between Tribes and States. Such a mechanism might include notifying the public how Title III is being implemented on Indian lands and/or arranging meetings between States and Tribal authorities on regional emergency response planning.

V. Regulatory Analyses

A. Regulatory Impact Analysis

Executive Order (E.O.) 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 every major rule. Under E.O. 12291, a "major" rule is one that is likely to result in (1) an annual cost to the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

The RIA in support of this proposed rulemaking shows that today's proposed regulation is non-major because it results in an annual cost to the economy of between $58 and $72 million and does not impose any of the other adverse effects stipulated above. The RIA, formally entitled "Regulatory Impact Analysis in Support of a Permanent Reporting Threshold under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act," is available for inspection in the docket supporting this proposed rulemaking. The RIA describes the steps used to estimate the total number of facilities affected by the regulation, the cost of the regulation on a per-facility and national basis, the estimated benefits of the regulation, and any potential economic impacts of the regulation. This section briefly discusses the findings of the RIA.

1. Number of Affected Facilities and Covered Chemicals

As discussed above, EPA reviewed data on chemical usage and storage available from several States and cities. The data bases developed by the Los Angeles City Fire Department and by New Jersey's Right-to-Know program were used in the RIA to estimate the number of facilities, the number of chemicals, and the number of pounds of chemicals that would be reported under the different reporting threshold options under consideration by the Agency. The data include information on a cross-section of facilities representing a large number of industries in both the manufacturing and non-manufacturing sectors, contain the largest number of individual observations relative to other available data, and are representative of a broad list of chemicals similar to those subject to the OSHA HCS regulations.

The Agency acknowledges that there is a certain degree of imprecision associated with extrapolations from regional data. For example, facilities in the City of Los Angeles may not be representative of facilities in other parts of the nation. To help compensate for this limitation, two separate regional data bases were evaluated. The Agency extrapolated both data sets on an SIC code basis. That is, facilities in each SIC code were examined separately to estimate the number of facilities that would likely be reporting at each threshold level and the number of chemicals likely to be reported. Once the analysis was performed on an individual SIC code basis, the national estimates were derived separately for each data base by aggregating the individual SIC code estimates. This extrapolation methodology, however, does assume that facilities in the City of Los Angeles and New Jersey in a particular SIC code are similar to facilities in other parts of the nation in that SIC code.

2. Estimated National Cost of the Alternative Thresholds

EPA has estimated the potential cost of each of the alternative reporting thresholds. The methodology follows the same general procedures that were used in support of the October 15, 1987 final rule, and uses the same unit cost estimates developed under that rulemaking. Only two adaptations have been made in the analysis. First, SERCs, LEPCs, and fire departments are assumed already to have taken the steps to familiarize themselves with the reporting requirements, to have established recordkeeping systems, and to have developed any required public notices about the availability of data. Second, facilities currently subject to the rule are assumed to have developed the necessary recordkeeping and reporting systems.

The unit costs for manufacturers are assumed to vary by size, reflecting generally the larger number of hazardous chemicals and the potentially more elaborate decision-making process in larger establishments. Unit costs for non-manufacturers are assumed to be the same as those for small manufacturers (employment of less than 20). This assumption reflects the preponderance of small facilities in non-manufacturing (about 80 percent of all non-manufacturing facilities employ fewer than 20 employees), as well as the small average number of hazardous chemicals located at non-manufacturing facilities.

Total costs are estimated in each year, using cost estimates expressed in 1987 dollars (that is, the analysis does not include inflation). The costs are summarized in two ways. First, the present value cost is estimated by discounting the costs through Fiscal Year (FY) FY 2000 back to FY 1990, the first year of the permanent threshold for the manufacturing sector. (The Federal fiscal year begins on October 1 of the

previous calendar year.) Second, the equivalent annual cost is estimated for the period FY 1990 to FY 2000. The present value cost represents the amount that, if borrowed in FY 1990 at 4 percent interest after inflation, would be sufficient to cover all costs incurred through FY 2000. The equivalent annual cost is the amount of the uniform annuity payment that would be needed in each year to repay a loan equal to the present value cost, using a rate of return of 4 percent. The table below shows the total estimated expenditure in each year (in 1987 dollars), as well as the present value costs and the equivalent annual cost for each of the six options.

SUMMARY OF ESTIMATED TOTAL COSTS, FISCAL YEARS 1990–2000

[million dollars]

Option	Fiscal year		Present value costs	Equivalent annual costs
	1990 costs	1991 costs		
1	16–23	67–87	419–505	49–60
2	13–14	55–74	457–606	54–72
3	61–62	144–184	706–891	83–107
4	81–97	186–247	869–1,068	102–126
5	113–130	204–335	985–1,328	116–159
6	149	303	1,295	153

The ranges of costs presented above represent costs attributable to the different reporting threshold options; they do not include costs of compliance with the phase-in thresholds used in the first two years of reporting. The permanent reporting threshold will be in effect for the third reporting year, beginning on October 17, 1989 for manufacturers (for the purposes of the analysis assumed to be day one of FY 1990) and for non-manufacturers on September 24, 1990 (assumed to be day one of FY 1991). Because it is assumed that initial compliance with the requirements of section 311 will have been completed by October 1, 1989, only ongoing activities under section 311, such as submittal of revised or new MSDSs, are included in the cost calculations. Most of the costs presented in the table, therefore, are attributable to filing and processing the section 312 Tier I and Tier II forms.

The largest yearly costs are expected to be incurred in FY 1991, when non-manufacturers are required to comply with the permanent threshold standards. FY 1991 costs, therefore, reflect the on-going costs for facilities in the manufacturing sector, plus first-year costs of compliance with the permanent reporting threshold for non-manufacturing facilities. One anomaly in the costs is apparent—costs in the first year are higher under Option 1 than under Option 2, even though Option 1 represents a less stringent reporting requirement. The reason for this finding is that changing the threshold reporting requirement to a less stringent standard would require all affected facilities to reevaluate chemical usage patterns for all currently reported chemicals, whereas maintaining the status quo is assumed not to require such an extensive review.

3. Accidental Releases

EPA has looked at reports of accidental releases as indications of how well the different options would cover serious chemical mishaps. Readily available data (derived from the National Response Center and other sources and captured in EPA's Acute Hazardous Events Data Base) contain summaries of 281 releases from fixed sites with records of human casualties and quantities of substances released. Unfortunately, most reports of releases do not provide information on quantities of the substances on hand at the facility. Sometimes all of the substance on hand will be released in an accident, but more often only a small fraction is released. It is known, for example, that for a few well-studied serious releases (e.g., Bhopal, the Ashland oil spill in western Pennsylvania), the amount on hand at the facility was many times higher than the amount released. EPA used the available data to estimate whether a particular facility was likely to have exceeded the reporting thresholds being analyzed for sections 311 and 312. The quantity reported in the data base, therefore, was multiplied by factors ranging from 1.5 to 10 to estimate inventories at these facilities.

EPA estimates, based on the 281 events in the Acute Hazardous Events Data Base, and adjusting the quantities to reflect likely inventory amounts, that at Option 2, facilities and chemicals subject to reporting would account for 65 to 69 percent of these serious releases. The higher threshold at Option 1 would lower this coverage to 59 to 63 percent. The lower thresholds of Options 3, 4, and 5 would have approximately equal coverage of 75 to 83 percent of these serious events. At Options 6 (zero threshold), 100 percent of events would be covered. The proportion of injuries at facilities likely to be covered under Options 1 through 5 is greater than the proportion of events covered—74 to 77 percent for Option 2, 64 to 71 percent for Option 1, and 88 to 92 percent for Options 3, 4, and 5.

This analysis, "Application of Acute Hazardous Events Data Base to 311/312 Threshold Options," is available for inspection in the public docket.

B. Regulatory Flexibility Act

1. Purpose

Under the Regulatory Flexibility Act, whenever an agency issues a proposed or final rule, 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 government jurisdictions), unless the agency's administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Chapter 5 of the RIA supporting this proposed rule addresses the impact of this rule on small businesses. Based on this analysis, 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 to 19 employees) to average and median sales for those facilities, by two-digit SIC codes. There are approximately 183,000 small businesses that would be affected by the proposed rule, representing less than five percent of the total number of small businesses in affected SIC codes in the U.S.

In order to assess the impacts on small businesses, several guidelines were used. The primary criterion, however, is the ratio of annual before-tax costs to average and median sales. Under Option 2, the selected option, first-year and annualized costs that would be incurred by very small facilities (1.9 employees) are estimated to be $97 and $125, respectively. As a percentage of median sales, the cost to sales ratio (expressed as a percentage) for these small facilities under Option 2 ranges from 0.01 percent to 0.33 percent. This is well within EPA's guidelines that costs remain below five percent of sales in order to avoid significant impacts.

3. Certification

On the basis of the analysis 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 Office of Management and Budget (OMB) has approved the information collection requirements in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C.

3501 *et seq.*, and assigned OMB control number 2050–0072.

The public reporting burden for this collection of information is estimated at about 29 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, OMB, 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 contained in this proposal.

List of Subjects

40 CFR Part 350

Chemicals, Hazardous substances, Extremely hazardous substances, Toxic chemicals, Community right-to-know, Superfund Amendments and Reauthorization Act, Trade secrets, Trade secrecy claims, Intergovernmental relations.

40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

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.

40 CFR Part 372

Environmental protection, Recordkeeping, reporting, and certification requirements, Toxic chemicals.

Dated: March 22, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the Preamble, Parts 350, 355, and 370 of Subtitle J of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 350—TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION AND TRADE SECRET DISCLOSURE TO HEALTH PROFESSIONALS

1. The authority citation for Part 350 continues to read as follows:

Authority: 42 U.S.C. 11042, 11043, and 11048.

2. Section 350.1 is amended by adding the following definitions:

§ 350.1 Definitions.

* * * * *

"Chief Executive Officer of the tribe" means the person who is recognized by the Bureau of Indian Affairs as the chief administrative officer of the tribe.

* * * * *

"Commission" means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, "commission" means the emergency response commission for the tribe under whose jurisdiction the facility is located. In the absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

* * * * *

"Facility" means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). "Facility" shall include man-made structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. A facility may contain more than one establishment. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

"Indian Country" means "Indian country" as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have been extinguished, including rights-of-way running through the same.

* * * * *

"Indian tribe" means those tribes federally recognized by the Secretary of the Interior.

* * * * *

"Local emergency planning committee" or "committee" means the local emergency planning committee appointed by the emergency response commission.

* * * * *

"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 and Indian Country.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for Part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11003, 11004, 11025, 11028, 11029.

4. Section 355.20 is amended by revising the definitions of "commission" and "facility" and by adding the definitions, "Chief Executive Officer of the tribe," "committee," "Establishment," "Indian Country," "Indian tribe," and "state" to read as follows:

§ 355.20 Definitions.

* * * * *

"Chief Executive Officer of the tribe" means the person who is recognized by the Bureau of Indian Affairs as the chief administrative officer of the tribe.

"Commission" means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, "commission" means the emergency response commission for the tribe under whose jurisdiction the facility is located. In absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a

cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

"Committee" or "Local emergency planning committee" means the local emergency planning committee appointed by the emergency response commission.

* * * * *

"Establishment" means an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed.

* * * * *

"Facility" means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). "Facility" shall include man-made structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. A facility may contain more than one establishment. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

"Indian Country" means "Indian country" as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have been extinguished, including rights-of-way running through the same.

"Indian tribe" means those tribes federally recognized by the Secretary of the Interior.

* * * * *

"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 and Indian Country.

* * * * *

5. Section 355.30 is amended by adding a new paragraph (f) to read as follows:

§ 355.30 Emergency planning.

* * * * *

(f) Emergency planning notification by certain owners or establishments on leased property.

(1) If two or more persons, who do not have any common corporate or business interest (including common ownership or control), operate separate establishments within a single facility, each such person shall treat the establishment it operates as a facility for purposes of this section. The determinations in paragraph (a) of this section shall be made for those establishments. If any such owner or operator determines that there is present at his establishment an amount of any extremely hazardous substance equal to or in excess of its threshold planning quantity, or designated, after public notice and opportunity for comment, by the Commission or the Governor for the State in which the establishment is located, the operator shall make notification in accordance with paragraphs (b), (c), and (d) of this section for the establishment. For the purposes of this paragraph, a common corporate or business interest includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by another, or ownership of a controlling interest in both persons by a third person.

(2) Persons operating separate establishments within a single facility owned or operated by a single parent company or having a common business interest may submit separate emergency notifications provided the determination on that emergency planning notification shall be made based on the chemicals present at the facility as a whole (all establishments combined.)

6. Section 355.40 is amended by redesignating paragraph (b)(4)(ii) as paragraph (c)(1) and revising it and by adding new paragraphs (c) (2) and (3) to read as follows:

§ 355.40 Emergency release notification.

* * * * *

(c) *Special notice requirements.* (1) An owner or operator of a facility from which there is a transportation-related release may meet the requirements of this section by providing the information indicated in paragraph (b)(2) of this section to the 911 operator, or in absence of a 911 emergency telephone number, to the operator. For the purposes of this paragraph, a "transportation-related release" means a release during transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee.

(2) If two or more persons, who do not have any common corporate or business interest (including common ownership or control), operate separate establishments within a single facility, each such person shall treat the establishment it operates as a facility for purposes of this section. The determinations in paragraph (a) of this section shall be made for those establishments as if they were facilities. If any such owner or operator determines that his establishment produces, uses, or stores hazardous chemicals and has released a reportable quantity of any extremely hazardous substance or CERCLA hazardous substance the operator shall make notification in accordance with paragraph (b) of this section for the establishment. For the purposes of this paragraph, a common corporate or business interest includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by another, or ownership of a controlling interest in both persons by a third person.

(3) Persons operating separate establishments within a single facility owned or operated by a single parent company or having a common business interest may submit separate emergency release notifications provided the determination on that emergency release notification shall be made based on the chemicals released at the facility as a whole (all establishments combined.)

7. Appendix A to Part 355 is amended by revising the Reportable Quantity listed for Hydrogen Chloride and Methacrylonitrile to read as follows:

Appendix A—List of Extremely Hazardous Substances and Their ThresholdPlanning Quantities

[Alphabetical Order]

			Reportable quantity (pounds)	
7647-01-0	Hydrogen Chloride (Gas Only)	* * *	5,000	* * *
126-98-7	Methacrylonitrile	* * *	1,000	* * *

Appendix B—List of Extremely Hazardous Substances and Their ThresholdPlanning Quantities

[CAS Number Order]

			Reportable quantity (pounds)	
		* * * * *		
26-96-7	Methacrylonitrile	* * *	1,000	* * *
7647-01-0	Hydrogen Chloride (Gas Only)	* * *	5,000	* * *

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

9. The authority citation for Part 370 continues to read as follows:

Authority: 42 U.S.C 11011, 11012, 11024, 11025, 11028, 11029.

10. Section 370.2 is amended by revising the definitions of "facility," "commission," "committee", and "State" and by adding the definitions, "chief Executive Officer of the tribe," "Establishment," "Indian Country," and "Indian tribe" to read as follows:

§ 370.2 Definitions.

"Chief Executive Officer of the tribe" means the person who is recognized by the Bureau of Indian Affairs as the chief administrative officer of the tribe.

"Commission" means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, "commission" means the emergency response commission for the tribe under whose jurisdiction the facility is located. In absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

"Committee" or "local emergency planning committee" means the local emergency planning committee appointed by the emergency response commission.

* * * * *

"Establishment" means an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed.

* * * * *

"Facility" means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). "Facility" shall include man-made structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. A facility may contain more than one establishment. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

* * * * *

"Indian Country" means "Indian country" as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have been extinguished, including rights-of-way running through the same.

"Indian tribe" means those tribes federally recognized by the Secretary of the Interior.

* * * * *

"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 and Indian Country.

* * * * *

11. Section 370.20 is revised to read as follows:

§ 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 (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 as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of a facility subject to this subpart shall submit an MSDS on or before October 17, 1987 (or within three 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 and for all extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (approximately 55 gallons) or the TPQ, whichever is less.

(2) The owner or operator of a facility subject to this subpart shall submit the Tier I form on or before March 1, 1988 (or March 1 of the first year after the facility first becomes subject to this subpart), and annually thereafter, covering all hazardous chemicals present at a facility during the preceding calendar year in amounts equal to or greater than 10,000 pounds and extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (approximately 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 under §§ 370.21(d) and 270.25(c) of this part shall be zero.

12. Section 370.21 is amended by adding a new paragraph (e) to read as follows:

§ 370.21 MSDS reporting.

* * * * *

(e) *Reporting by establishments.* (1) If two or more persons, who do not have any common corporate or business interest (including common ownership or control), operate separate establishments within a single facility, each such person shall treat the establishment it operates as a facility for purposes of this section. Determinations of applicability under § 370.20 shall be made for those establishments as if they were facilities. An owner or operator of an establishment subject to this subpart under such a determination shall comply with all applicable paragraphs of this section. For the purposes of this paragraph, a common corporate or

business interest includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by another, or ownership of a controlling interest in both persons by a third person.

(2) Persons operating separate establishments owned or operated by a single parent company or having a common business interest may submit separate MSDS or lists under this section provided the determination that the MSDSs or lists must be submitted is based upon the total amount of hazardous chemicals at the facility as a whole (all establishments combined).

13. Section 370.25 is amended by adding a new paragraph (e) to read as follows:

§ 370.25 Inventory reporting.

* * * * *

(e) *Reporting by establishments.* (1) If two or more persons, who do not have any common corporate or business interest (including common ownership or control), operate separate establishments within a single facility, each such person shall treat the establishment it operates as a facility for purposes of this section. Determinations of applicability under § 370.20 shall be made for those establishments as if they were facilities. An owner or operator of an establishment subject to this subpart under such a determination shall comply with all applicable paragraphs of this section. For the purposes of this paragraph, a common corporate or business interest includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by another, or ownership of a controlling interest in both persons by a third person.

(2) Persons operating separate establishments owned or operated by a single parent company or having a common business interest may submit separate inventory reports under this section provided the determination that the inventory reports must be submitted is based upon the total amount of hazardous chemicals at the facility as a whole (all establishments combined).

14. Section 370.28 is amended by adding a new paragraph (b)(3) to read as follows:

§ 370.28 Mixtures.

* * * * *

(b) * * *

(3) If extremely hazardous substances are hazardous components of a mixture, the quantity of the extremely hazardous substance in each mixture shall be aggregated to determine if the threshold value has been reached for the facility. Reporting may be accomplished by reporting on the component or the mixture even if the amount of the mixture(s) is below the reporting threshold.

15. Section 370.40 is revised to read as follows:

§ 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) of this part. 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 _____

A. ☐ entire facility B. ☐ establishment within a facility

SIC Code ☐☐☐☐ Dun & Brad Number ☐☐-☐☐☐-☐☐☐☐

Emergency Contacts

Name _____
Title _____
Phone ( )
24 Hour Phone ( )

Name _____
Title _____
Phone ( )
24 Hour Phone ( )

Owner/Operator

Name _____
Mail Address _____
Phone ( )

☐ Check if form is identical to form submitted last year.

☐ Check if site plan is attached

	Hazard Type	*Max Amount**	*Average Daily Amount**	*Number of Days On-Site*	*General Location*
Physical Hazards	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 Code	Weight Range in Pounds From...	To...
01	0	99
02	100	999
03	1000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	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.)

Public reporting burden for this collection of information is estimated to average 29 hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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.

WHAT CHEMICALS ARE EXCLUDED

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.

OSHA regulations, Section 1910.1200(b), provide additional exemptions that affect reporting under this rule.

REPORTING THRESHOLDS

Minimum thresholds have been established for Tier One/Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of SARA, the reporting threshold is 500 pounds or the threshold planning quantity (TPQ), whichever is lower;

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds.

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds.

WHEN TO SUBMIT THIS FORM

Beginning March 1, for manufacturing facilities, and March 1, 1989 for non-manufacturing facilities, owners or operators that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit either Tier One or Tier Two Forms.

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.

INSTRUCTIONS

Please read these instructions carefully. Print or type all responses.

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.

You must indicate whether your report is for the facility as a whole or for an establishment(s) within the facility. Check box A if the report contains information about a chemical for an entire facility (including industrial park establishments which are reporting as an entire facility). Check box B if the report contains information about a chemical but only for a particular establishment, or limited group of establishments, within a facility which have some form of common business interest or are owned or operated by the same parent company.

Under section 370.25 of the reporting rule, you may choose to submit a separate Tier I or Tier II form for each facility. This allows you the option of reporting separately on the activities involving a hazardous chemical at each establishment, or group of establishments (e.g., only part of a covered facility), rather than submitting a single Tier I/II for that chemical for the entire facility. You may do this provided that the total quantity of the hazardous chemical from the entire covered facility is used as the reference point in determining the reporting threshold.

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. This requirement is mandatory. The facility must make some arrangement to ensure that a 24 hour contact is available.

PHYSICAL AND HEALTH HAZARDS

Descriptions, Amounts, and Locations

This section requires aggregate information on chemicals by hazard categories as defined in 40 CFR 370.2. 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.

Hazard Category Comparison For Reporting Under Sections 311 and 312

EPA's Hazard Categories	OSHA's Hazard Categories
Fire Hazard	Flammable Combustion Liquid Pyrophoric Oxidizer
Sudden Release of Pressure	Explosive Compressed Gas
Reactive	Unstable Reactive Organic Peroxide Water Reactive
Immediate (Acute) Health Hazards	Highly Toxic Toxic Irritant Sensitizer Corrosive Other hazardous chemicals with an adverse effect with short term exposure
Delayed (Chronic) Health Hazard	Carcinogens Other hazardous chemicals with an adverse effect with long term exposure

- 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).

INSTRUCTIONS

Please read these instructions carefully. Print or type all responses.

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 500 lbs. respectively. You add these together to reach a total of 10,500 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 10,500 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.

BILLING CODE 6560-50-C

INSTRUCTIONS

Please read these instructions carefully. Print or type all responses.

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.

16. Section 370.41 is revised to read as follows:

§ 370.41 Tier II 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(c) of this part. 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

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 ______
A. ☐ entire facility B. ☐ establishment within a facility
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____ ☐ Check if form is identical to form submitted last year

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 ☐ Chem. Name ________ *Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS	☐ Fire ☐ Sudden Release of Pressure ☐ Reactivity ☐ Immediate (acute) ☐ Delayed (chronic)	☐☐	☐☐	☐☐☐		
CAS ☐☐☐☐☐☐ ☐☐ ☐ Trade Secret ☐ Chem. Name ________ *Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS	☐ Fire ☐ Sudden Release of Pressure ☐ Reactivity ☐ Immediate (acute) ☐ Delayed (chronic)	☐☐	☐☐	☐☐☐		
CAS ☐☐☐☐☐☐ ☐☐ ☐ Trade Secret ☐ Chem. Name ________ *Check all that apply:* ☐ Pure ☐ Mix ☐ Solid ☐ Liquid ☐ Gas ☐ EHS	☐ Fire ☐ Sudden Release of Pressure ☐ Reactivity ☐ 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 ________

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 _____
A. ☐ entire facility B. ☐ establishment within a facility
SIC Code ☐☐☐☐ Dun & Bradstreet 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, (SARA) 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.

Public reporting burden for this collection of information is estimated to average 29 hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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 Communication Standard, found in Title 29 of the Code of Federal Regulations at §1910.1200.

WHAT CHEMICALS ARE INCLUDED

If you are submitting Tier Two forms in lieu of Tier One, you must report the required information on this Tier Two form for each chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below). Hazardous chemicals are any substance for which your facility must maintain a MSDS under OSHA's Hazard Communication Standard.

If you elect to submit Tier One rather than Tier Two, you may still be required to submit Tier Two information upon request.

WHAT CHEMICALS ARE EXCLUDED

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.

OSHA regulations, Section 1910.1200(b), provide additional exemptions that affect reporting under this rule.

REPORTING THRESHOLDS

Minimum thresholds have been established for Tier One/Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of SARA, the reporting threshold is 500 pounds or the threshold planning quantity (TPQ), whichever is lower;

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds.

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds.

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

Beginning March 1, for manufacturing facilities, and March 1, 1989 for non-manufacturing facilities, owners or operators that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit either Tier One or Tier Two forms.

If you choose to submit Tier One, rather than Tier Two, be aware that you may have to submit Tier Two information later, upon request of an authorized official. You must submit the Tier Two form within 30 days of receipt of a written request.

WHERE TO SUBMIT THIS FORM

Send either a completed Tier One form or Tier Two form(s) 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.

If a Tier Two form is submitted in response to a request, send the completed 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 Tier Two responses require more than one page use additional forms and 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.

You must indicate whether your report is for the facility as a whole or for an establishment(s) within the facility. Check box A if the report contains information about a chemical for an entire facility, including multi-establishment facilities owned by the same parent company. Check box B if the report contains information only about a chemical for a particular establishment, or limited group of establishments that do not have any common corporate or business interests.

Under section 370.25 of the reporting rule, you may choose to submit a separate Tier I or Tier II form for each facility. This allows you the option of reporting separately on the activities involving a hazardous chemical at each establishment, or group of establishments (e.g., only part of a covered facility), rather than submitting a single Tier I/II for that chemical for the entire facility. You may do this provided that the total quantity of the hazardous chemical from the entire covered facility is used as the reference point in determining the reporting threshold.

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. This requirement is mandatory. A facility must make some arrangement to ensure that a 24 hour contact is available.

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 registry number (CAS). For mixtures, enter the CAS number of the mixture as a whole if it has been assigned a number distinct from its constituents. 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 class or category that is structurally descriptive of the chemical (e.g., list toulene diisocynate 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 EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.

2. Enter the chemical name or common name of each hazardous chemical.
3. Check box for *ALL* applicable descriptors: pure or mixture; *and* solid, liquid, or gas; and whether the chemical is or contains an EHS.

EXAMPLE:

You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS number. Then you check "pure" *and* "mix" -- as well as "liquid" *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 370.2. 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.

Hazard Category Comparison For Reporting Under Sections 311 and 312

EPA's Hazard Categories	OSHA's Hazard Categories
Fire Hazard	Flammable Combustion Liquid Pyrophoric Oxidizer
Sudden Release of Pressure	Explosive Compressed Gas
Reactive	Unstable Reactive Organic Peroxide Water Reactive
Immediate (Acute) Health Hazards	Highly Toxic Toxic Irritant Sensitizer Corrosive Other hazardous chemicals with an adverse effect with short term exposure
Delayed (Chronic) Health Hazard	Carcinogens Other hazardous chemicals with an adverse effect with long term exposure

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...
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	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 five 5,000 - gallon storage tanks. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 by 7.29 to get a weight of 18,225 pounds.

Then you look at Table I and find that the range value 03 corresponds to 18,225. You enter 03 as the Maximum Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 18,255 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 25,000-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 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on-site, you calculate an average daily amount of 14,400 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.

Then you look at Table I and find that the range value 03 corresponds to 10,500. You enter 03 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 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. Please note that a particluar chemical may be located in several places around the facility. Each row of boxes followed by a line represents a unique location for the same chemical.

Storage Codes: Indicate the types and conditions of storage present.

a. *Look at Table II.* For each location, find the appropriate storage type and enter the corresponding code in the first box of the three.

b. *Look at Table III.* For each location, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box of the three. Enter the applicable temperature code in the third box of the three.

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 the 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.

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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 the first line of the storage locations..
- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number 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 statement 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.

PART 372—TOXIC CHEMICAL RELEASE REPORTING; COMMUNITY RIGHT-TO-KNOW

17. The authority citation for Part 372 continues to read as follows:

Authority: 42 U.S.C. 11013, 11028.

18. Section 372.3 is amended by adding definitions to read as follows:

§ 372.3 Definitions.

* * * * *

"Chief Executive Officer of the tribe" means the person who is recognized by the Bureau of Indian Affairs as the chief administrative officer of the tribe.

* * * * *

"Indian Country" means "Indian country" as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have been extinguished, including rights-of-way running through the same.

* * * * *

"Indian tribe" means those tribes federally recognized by the Secretary of the Interior.

* * * * *

"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 Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

* * * * *

19. Section 372.30 is amended by revising paragraph (a) to read as follows:

§ 372.30 Reporting requirements and schedule for reporting.

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350–1) in accordance with the instructions in Subpart E. If the covered facility is located in Indian Country, the facility shall submit a completed EPA Form R as described above to the official designated by the Chief Executive Officer of the applicable Indian tribe, unless the tribe has entered into a cooperative agreement with a State, in which case, the facility shall submit the completed EPA Form R to the receiving entity designated in the cooperative agreement.

* * * * *

[FR Doc. 89–7321 Filed 3–28–89; 8:45 am]
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federal register

Wednesday
March 29, 1989

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 6, 14, 19, 31, 37, and 52
Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Interim Rule With Request for Comments and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 14, 19, 31, 37, and 52

[Federal Acquisition Circular 84-44]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rules with request for comments; and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-44 amends the Federal Acquisition Regulation (FAR) with respect to the following: Pay-as-you-Go Pension Costs; Severance Pay, Foreign Nationals; Allowability of Litigation Costs; Delegation of Authority to Approve J&A's; Mistake in Bid Procedures; and Small Business Size Standards.

DATES: *Effective dates:* April 28, 1989, except,

Item I—(Section 31.001 and 31.205-6(j)(2), (3), and (6))—March 29, 1989.

Item II—(Section 31.205-6(g), 37.110, and 52.237-8)—March 28, 1989.

Item III—(Section 31.205-15, 31.205-33, and 31.205-47)—April 17, 1989.

Comment date: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 30, 1989, to be considered in the formulation of the three final rules.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAC 84-44 and the appropriate Item number in all correspondence related to each interim rule.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rules

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Items I, II, and III of FAC 84-44 as interim rules. It is determined that compelling reasons exist to promulgate these interim rules without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to these interim rules will be considered in formulating the final rules.

FAC 84-44, Item I—Pay-as-you-Go Pension Costs

This action is necessary because the United States Court of Appeals has ruled that FAR 31.205-6(j)(5) is inconsistent with FAR 30.412, and that the controlling regulation is FAR 30.412.

FAC 84-44, Item II—Severance Pay, Foreign Nationals

This action is necessary in order to implement section 322 of Pub. L. 100-456 regarding limitations on allowable severance pay costs with respect to certain service contracts performed overseas. The statute stipulates that the rule be promulgated by March 28, 1989.

FAC 84-44, Item III—Allowability of Litigation Costs

This action is necessary in order to promulgate the regulatory coverage within the time required by the Major Fraud Act, Pub. L. 100-700. The statute stipulates that the rule is effective on the earlier of April 17, 1989, or 30 days after publication of the rule in the Federal Register.

B. Background

FAC 84-44, Item I—Pay-as-you-Go Pension Costs

The United States Court of Appeals for the Federal Circuit has ruled that the current FAR language at 31.205-6(j)(5) is in conflict with FAR 30.412 (CAS 412). Specifically, this decision concluded that the cost principle, which makes pension costs allowable only if funded by the time set for filing the Federal income tax return, is inconsistent with CAS 412, which states that costs to be assigned to a given year must only be incurred and allocated to that year.

FAC 84-44, Item II—Severance Pay, Foreign Nationals

These FAR revisions are based upon the requirements of section 322, Pub. L. 100-456. The statute specifically applies to Department of Defense service contracts performed overseas. Because of the practicality of establishing uniform cost principles, the Councils considered extending the applicability of the revisions to all contracts to which the commercial cost principles are applicable, including the contracts of all civilian agencies. However, some agencies felt they might obtain fewer bids for services because contractors may prefer to do business with customers who do not limit severance payments to amounts typically paid in the United States. Accordingly, the Councils decided to make the limitation applicable only for DoD contracts and for other Government contracts at the option of the contracting officer.

FAC 84-44, Item III—Allowability of Litigation Costs

The revisions are based, in part, upon the requirements of the "Major Fraud Act of 1988," Pub. L. 100-700. Identical direction as to the allowability of costs of certain proceedings (largely of a legal nature) was provided to the Defense Department and civilian agencies. The Councils decided that the best approach was to incorporate them into the FAR. As the new law covered many of the areas the Councils were pursuing under a prior case, they decided to combine the cases into one; hence a few items of a related nature not included in the law were incorporated into the coverage. In addition, some existing coverage was relocated to establish more logical groupings.

C. Regulatory Flexibility Act

FAC 84-44, Items I, II, and III

DoD, GSA, and NASA certify that the interim rules are not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., because most contracts awarded to small entities are awarded on a competitive fixed-price basis and cost principles do not apply. Initial Regulatory Flexibility Analyses (IRFA) have, therefore, not been performed. However, comments are invited from small businesses and other interested parties.

Comments from small entities concerning the affected FAR sections will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 89-610 in the correspondence.

FAC 84-44, Items IV, V, and VI

DoD, GSA, and NASA certify that the Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies.

D. Paperwork Reduction Act

FAC 84–44, Items I through VI

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because these interim and final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

E. Public Comments

FAC 84–44, Item V

On March 16, 1988, a proposed rule was published in the **Federal Register** (53 FR 8734). The comments that were received were considered by the Councils in the development of this final rule.

List of Subjects in 48 CFR Parts 6, 14, 19, 31, 37, and 52

Government procurement.

Dated: March 23, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular Number 84–44

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–44 is effective April 28, 1989, except,

Item I—(Section 31.001 and 31.205–6(j) (2), (3), and (6)—March 29, 1989.

Item II—(Section 31.105–6(g), 37.110, and 52.237–8)—March 28, 1989.

Item III—(Section 31.205–15, 31.205–33, and 31.205–47)—April 17, 1989.

Eleanor Spector,

Deputy Assistant Secretary for Procurement, DOD.

Richard G. Austin,

Acting Administrator.

March 16, 1989.

L. E. Hopkins,

Deputy Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–44 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Pay-as-you-go Pension Costs

FAR 31.001, 31.205–6 (j)(2), (j)(3), and (j)(6) are revised and 31.205–6(j)(5) is removed and reserved to bring the cost principle in line with FAR 30.412.

Item II—Severance Pay, Foreign Nationals

FAR 31.205–6(g), 37.110, and 52.237–8 are revised to assure that severance payments to foreign nationals employed under a service contract performed outside the United States do not exceed the typical rate of severance pay in the United States.

Item III—Allowability of Litigation Costs

FAR 31.205–15, 31.205–33, and 31.205–47 are revised to implement parts of the Major Fraud Act, Pub. L. 100–700, regarding the allowability of litigation costs and certain other costs. The Act requires that some proceedings costs not be allowable when violations of laws or certain regulations are found. The Act allows these costs up to 80 percent of incurred costs when they are not disallowed.

Item IV—Delegation of Authority to Approve Justifications and Approvals (J&A'S)

FAR 6.304(a) is revised to be consistent with DoD implementation of section 803 of Pub. L. 100–456, which authorizes delegation of the authority of the Under Secretary of Defense for Acquisition to approve justifications for other than full and open competition in excess of $10,000,000.

Item V—Mistake in Bid Procedures

FAR 14.406–3 is amended to clarify the obligation of the contracting officer to disclose all appropriate information when requesting additional evidence to support a contractor's bid when there is a basis to believe that the bid might contain a mistake.

Item VI—Small Business Size Standards

FAR 19.102 is revised to incorporate changes made to the size standards regulations as published in the **Federal Register** by the Small Business Administration. The modified size standard in the SIC Code 3731 of Major Group 37, pertaining to Shipbuilding and Ship Repair was effective February 16, 1989, by issuance of an emergency final rule on February 16, 1989 (54 FR 7029). The addition of SIC Code 4924 to Major Group 49 was effective November 25, 1988, by issuance of an emergency interim final rule on Novmber 25, 1988 (53 FR 47665). The modified footnote 10, as applies to SIC Codes 4724 and 6531, was effective February 9, 1989, by issuance of a final rule on February 9, 1989 (54 FR 6267).

Therefore, 48 CFR Parts 6, 14, 19, 31, 37, and 52 are amended as set forth below:

1. The authority citation for Parts 6, 14, 19, 31, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473.

PART 6—COMPETITION REQUIREMENTS

2. Section 6.304 is amended by revising the introductory text of paragraph (a) and paragraph (a)(4) to read as follows:

6.304 Approval of the justification.

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—

* * * * *

(4) For a proposed contract over $10,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. Except as provided in 10 U.S.C. 2304(f)(1)(B)(iii), which applies to the Department of Defense, this authority is not delegable.

* * * * *

PART 14—SEALED BIDDING

3. Section 14.406–3 is amended by revising paragraph (g)(1)(iv) to read as follows:

14.406–3 Other mistakes disclosed before award.

* * * * *

(g) * * *

(1) * * *

(iv) Of any other information, proper for disclosure, that leads the contracting officer to believe that there is a mistake in bid.

PART 19—SMALL BUSINESS AND SMALL BUSINESS DISADVANTAGED BUSINESS CONCERNS

4. Section 19.102 is amended in Major Group 37 by revising SIC Code 3731; by adding SIC Code 4924 in Major Group 49; and by revising Footnote 10, applicable to SIC Codes 4724 and 6531, following Major Group 89, to read as follows:

19.102 Size standards.

* * * * *

SIC	Description	Size
3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000
	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000
	Ship Repair (including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian	1,000
	Ship Repair (including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian	1,000
*	* * * *	

SIC	Description	Size
4924	Natural Gas Distribution	500
*	* * * * *	

[10] As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received would be included as revenue.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

5. Section 31.001 is amended by alphabetically adding the definitions "Funded pension cost" and "Unfunded pension plan" to read as follows:

31.001 Definitions.

* * * * *

"Funded pension cost," as used in this part, means the portion of pension costs for a current or prior cost accounting period that has been paid to a funding agency.

* * * * *

"Unfunded pension plan," as used in this part, means a defined benefit pension plan for which no funding agency is established for the accumulation of contributions.

6. Section 31.205–6 is amended by revising the first sentence in paragraph (g)(2)(i); by revising the fourth sentence in paragraph (j)(2) and the first sentence of paragraph (j)(2)(i); by adding paragraphs (j)(3)(i)(A) and (j)(3)(i)(B); by removing and reserving paragraph (j)(5); and by revising paragraph (j)(6)(i) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(g) * * *

(2) * * *

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law; (B) employer-employee agreement; (C) established policy that constitutes, in effect, an implied agreement on the contractor's part; or (D) circumstances of the particular employment (but see 37.110(f) regarding services performed outside the United States).* * *

* * * * *

(j) * * *

(2) * * * Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in subdivision (j)(2)(i) and in subparagraphs (j) (3), (4), (6), and (7) of this subsection.

(i) Except for unfunded pension plans as defined in 31.001, to be allowable in the current year, pension costs must be funded by the time set for filing the Federal income tax return or any extension thereof.* * *

* * * * *

(3) * * *

(i) * * *

(A) Except for unfunded pension plans as defined in 31.001, normal costs of pension plans not funded in the year incurred, and all other components of pension costs (see 30.412–40(a)(1)) assignable to the current accounting period but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any part of a pension cost that is computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA) (see 30.412–50(c)(3)), will be allowable in those future accounting periods in which the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding occurred in the year the costs would have been assigned except for the waiver.

(B) Allowable costs for unfunded pension plans, as defined in 31.001, are limited to the amount computed in accordance with 30.412 and 30.413.

* * * * *

(5) [Reserved].

(6) * * *

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs.

* * * * *

7. Section 31.205–15 is amended by revising the title; by redesignating the existing text as paragraph (a); and by adding a new paragraph (b) to read as follows:

31.205–15 Fines, penalties, and mischarging costs.

* * * * *

(b) Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable. Such costs include those incurred to identify, measure, or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as the costs to rescreen and reconstruct records.

8. Section 31.205–33 is amended by revising paragraph (a); by removing paragraphs (d) and (f); and by redesignating existing paragraph (e) as new paragraph (d) to read as follows:

31.205–33 Professional and consultant service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor are allowable subject to paragraphs (b), (c), and (d) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 31.205–30 and 31.205–47).

* * * * *

9. Section 31.205–47 is amended by revising the section title; by revising in paragraph (a) the definition "Costs", and alphabetically adding the definitions "Conviction", "Penalty", and "Proceeding"; by revising paragraph (b); by removing existing paragraph (c) and adding new paragraphs (c) through (f); and by redesignating existing paragraph (d) as (g) and revising new (g) to read as follows:

31.205–47 Costs related to legal and other proceedings.

a. *Definitions.*

"Conviction," as used in this subsection, is defined in 9.403.

"Costs," include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; all elements of compensation, related costs and expenses of employees, officers and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bears a direct relationship to the proceedings.

* * * * *

"Penalty," does not include restitution, reimbursement, or compensatory damages.

"Proceeding," includes an investigation.

(b) Costs incurred in connection with any proceeding brought by Federal, State, local or foreign Government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employers) are unallowable if a result is—

(1) In a criminal proceeding, a conviction;

(2) In a civil or administrative proceeding, either a finding of contractor liability or imposition of a monetary penalty;

(3) A final decision by an appropriate official of an executive agency to:

(i) Debar or suspend the contractor;

(ii) Rescind or void a contract; or

(iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation;

(4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in subparagraphs (b) (1) through (3) of this subsection (but see paragraphs (c) and (d) of this subsection); or

(5) Not covered by subparagraphs (b) (1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of subparagraphs (b) (1) through (4) of this subsection.

(c) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement.

(d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either:

(1) As a direct result of a specific term or condition of a Federal contract; or

(2) As a result of compliance with specific written direction of the cognizant contracting officer.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this subsection, but which are not made unallowable by that paragraph, may be allowable to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under paragraph (c) of this subsection has explicitly considered this 80 percent rule, then the full amount of costs resulting from that agreement shall be allowable.

(f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with—

(1) Defense against Government claims or appeals or the prosecution of claims or appeals against the Government (see 33.201).

(2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions (see also 31.205–27).

(3) Defense of antitrust suits.

(4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.

(5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either (1) an agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or (2) dual sourcing, coproduction, or similar programs, are unallowable, except when (i) incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or (ii) when agreed to in writing by the contracting officer.

(6) Patent infringement litigation, unless otherwise provided for in the contract.

(7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.

(g) Costs which may be unallowable under 31.205–47, including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by paragraph (b) and subparagraphs (f)(4) and (f)(7) of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

PART 37—SERVICE CONTRACTING

10. Section 37.110 is amended by adding paragraph (f) to read as follows:

37.110 Solicitation provisions and contract clauses.

* * * * *

(f) For the Department of Defense, the contracting officer shall insert the clause at 52.237–8, Severance Payments to Foreign Nationals Employed Under a Service Contract Performed Outside the United States, in solicitations and contracts for services which may be performed in whole or in part outside the United States. Use of the clause by other Government agencies is optional.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.237–8 is added to read as follows:

52.237–8 Severance payments to foreign nationals employed under a service contract performed outside the United States.

As prescribed in 37.110(f), insert the following clause:

Severance Payments to Foreign Nationals Employed Under a Service Contract Performed Outside the United States (Mar. 1989)

(a) This clause applies to all pricing actions subject to Part 31 of the FAR.

(b) Notwithstanding the reference to geographical area in FAR 31.205–6(b)(1), severance payments to foreign nationals employed under a service contract or subcontract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States.

(End of clause)

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Flight Hours; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 24695; Amdt. 61-82]

RIN 2120-AA54

Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Flight Hours

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes a recreational pilot certificate. The recreational pilot certificate is intended to provide a lower cost alternative to the private pilot certificate by requiring less training than is currently required for private pilot certification. The recreational pilot certificate is intended for those persons interested in flying basic, experimental, or homebuilt aircraft in close proximity to a home airport while in airspace in which communication with air traffic control facilities is not required. The rule also establishes an annual flight review requirement for non-instrument-rated private pilots with fewer than 400 flight hours.

EFFECTIVE DATE: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Edna French, Manager, Project Development Branch, General Aviation and Commercial Division (AFS-850), Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Background

This final rule establishing the recreational pilot certificate results, in part, from the recommendations of a committee formed by the National Association of Flight Instructors (NAFI). The committee, composed of industry and Government representatives, was assembled to review the current requirements for student and private pilot certification.

The committee found that current certification requirements imposed an unnecessary burden on persons who desire to fly basic, homebuilt, and experimental aircraft in close proximity to a home airport that does not have a control tower. Because private pilots were required to receive training in radio navigation, basic attitude instrument flying, and radio communications procedures, training aircraft had become more complex and expensive. Additionally, the number of hours necessary to obtain private pilot certification was significantly greater because of these training requirements. The committee recognized that persons who intend to fly only basic, experimental, and homebuilt aircraft in close proximity to a home airport do not need to develop the additional skills required of a private pilot. Therefore, the committee recommended establishing a student recreational pilot certificate and a recreational pilot certificate to enable interested persons to be certificated to fly certain basic aircraft at significantly less cost than current regulations would allow.

The NAFI committee also identified weaknesses in current flight training procedures. The committee made several recommendations to address these problems. They included: (1) Requiring flight instructors to train students in specific maneuvers and procedures; (2) requiring students to pass a pro-solo written examination; (3) emphasizing current requirements for achieving a certain level of proficiency in pilot skills (i.e., training to a standard); (4) changing the biennial flight review requirement to an annual flight review for pilots with fewer than 400 hours of flight experience; and (5) requiring instruction and a logbook endorsement for pilots with fewer than 400 hours that have not acted as pilot-in-command (PIC) of an aircraft within the last 180 days. The NAFI committee recommendations were submitted as a petition for rulemaking and were published verbatim in the **Federal Register** (46 FR 10026; March 15, 1982).

Other bases for the final rule were recommendations from the General Aviation Safety Panel (the Safety Panel) and the Safety Review Task Force established by Secretary of Transportation Elizabeth Hanford Dole in December 1983. The Safety Panel consisted of 13 representatives from the general aviation community. It proposed an annual 2-hour training requirement for all pilots, regardless of total flying time or experience. The panel concluded that recurrent structured instruction for pilots would increase the level of safety, particularly for those pilots who are presently relying only on the biennial flight review to refresh their skills. The final rule requires an annual flight rule for low-time recreational and private pilots and further defines that flight review as 1 hour of flight instruction and 1 hour of ground instruction.

The Secretary's Safety Review Task Force identified this regulation as a significant safety item in its August 1985 report. The Task Force recommended, "That the FAA and the Office of the Secretary of Transportation [OST] cooperate to expedite issuance of the Final Rules or other appropriate follow-up to Notices of Proposed Rulemaking [NPRMs] on recreational and private pilot certification and training * * *."

The final rule is designed to provide multiple buffers between pilots desiring to fly in their familiar, local area for recreation and users of the increasingly complex airspace surrounding major population centers. These buffers provide a means of separating the mix of commercial aircraft and recreational aircraft which is intended to prevent midair collisions, such as that which occurred over Cerritos, California, in 1986.

The buffers include increased training in basic flying techniques, increased flight instructor supervision and control, increased testing requirements, limitations prohibiting the recreational pilot from flying in Terminal Control Areas (TCAs), Airport Traffic Areas (ATAs), Airport Radar Service Areas (ARSAs), or any airspace requiring communications with air traffic control. The recreational pilot has increased weather minimums and is restricted to flight in daylight hours only. For example, the recreational pilot must have at least 3 statute miles of visibility, even in uncontrolled airspace, whereas the private pilot may fly with a minimum of only 1 statute mile of visibility. Details of the privileges, requirements, and limitations are discussed in the following section.

Discussion of the Public Comments and the Amendments

This final rule is based upon Notice of Proposed Rulemaking No. 85-13 (50 FR 26286; June 25, 1985). All interested persons have been given an opportunity to participate in the rulemaking, and due consideration has been given to all matters presented.

The FAA received 2,881 comments in response to the NPRM. The issues discussed in these comments fall into six categories. All but the first category of comments relate to the new recreational pilot certificate. The categories are: (1) Changes affecting student and private pilots, (2) pilot qualifications, (3) aircraft restrictions, (4) operating restrictions, (5) training, and (6) currency requirements. Each category is discussed separately below.

To avoid renumbering, the rules pertaining to recreational pilots have been included in Subpart C, rather than in a separate subpart as proposed in the

Notice. Subpart C has been retitled "Student and Recreational Pilots." Recreational pilots may be placed in a separate subpart in a future rulemaking project.

Changes Affecting Student and Private Pilots

In addition to proposing a student recreational and recreational pilot certificate, NPRM 85–13 proposed numerous changes to current regulations governing student and private pilots. The proposal would have prohibited the following pilots from flying when the visibility was less than 3 statute miles during the day and less than 5 statute miles at night: student pilots, non-instrument-rated private pilots with fewer than 400 flight hours, and instrument-rated private pilots with fewer than 400 flight hours not flying under an IFR flight plan.

For all private pilots with fewer than 400 hours, the Notice proposed an annual flight review requirement and a prohibition against acting as pilot-in-command of an aircraft without additional instruction and a logbook endorsement if more than 180 days had passed since that person had acted as a PIC. The NPRM proposed the following: (1) A 2-hour annual training requirement consisting of 1 hour of flight instruction and 1 hour of ground instruction for private pilots, regardless of flight experience; (2) training and testing to a standard; (3) a minimum number of flights in lieu of a minimum number of hours to obtain private pilot certification; and (4) an instructor's endorsement for a private pilot to fly each make and model of high-performance aircraft flown by that pilot.

Most commenters oppose any changes to private pilot requirements. There are 1,537 comments opposing the use of a single rulemaking both to establish the recreational pilot certificate and to change requirements for other pilots. The specific proposals that would affect private pilots are opposed by approximately 90 percent of the commenters. The FAA has carefully reviewed these proposed private pilot rules and, with one exception, has decided not to make changes to private pilot requirements in the same rulemaking that establishes a recreational pilot certificate. The one exception is the annual flight review requirement for the non-instrument-rated private pilot who has logged fewer than 400 hours of flight time.

National Transportation Safety Board (NTSB) accident data indicate that pilot accident rates are much higher for pilots with fewer than 400 flight hours than they are for pilots with more than 400 flight hours. The data show a strong correlation between a higher number of total flight hours and lower accident rates. Instrument-rated private pilots have been tested and found competent in an operational environment that is more demandng than that of non-instrument-rated pilots. For this reason, and in the interest of safety, the FAA is adopting the proposal to require non-instrument-rated private pilots, with fewer than 400 hours of flight time, to satisfactorily complete an annual flight review in order to act as pilot-in-command of an aircraft. This requirement is found in new § 61.56(d).

The flight review requirements in § 61.56 are based on calendar months. To establish consistency throughout Part 61, requirements for both the biennial and annual flight reviews are based on calendar months.

The FAA has always required applicants for pilot certification to demonstrate a level of proficiency that meets the specified practical test performance standards. As stated in the NPRM, the overriding consideration for all pilot certification is proficiency. To emphasize the FAA's position, the NPRM proposed implementing two changes: (1) That student and recreational pilots receive both training and testing in specific required maneuvers and procedures, and (2) that aeronautical experience be measured in terms of a minimum number of flights instead of the standard minimum flight hour requirements.

The concept of training oriented toward maneuvers and procedures and demonstrating proficiency to a standard is included in the final rule for student pilots. (See § 61.87.) However, the flight proficiency required of an applicant for the recreational pilot certificate (§ 61.98) retains the concept of "pilot operations" to be consistent with the existing requirements for other pilot certificates.

In this final rule, the concept of minimum hour requirements, rather than a minimum number of flights, has been retained for private pilot certification. Commenters state that the definition of "flights" is too vague to assure compliance with the intent of the rule and is open to abuse. For example, in the case of a helicopter, a "flight" could be accomplished in seconds, simply by becoming airborne, hovering for a few seconds, and landing. Additionally, the concept of a minimum number of flights is not compatible with the minimum flight hour requirements of other pilot certificates and ratings and with the rules of the International Civil Aviation Organization. By retaining the current concept of minimum flight hours, it will be simpler for the recreational pilot to use the recreational pilot certificate as a building block toward earning a higher grade pilot certificate.

This final rule does not establish a student recreational pilot certificate as was proposed in the NPRM. Instead, one student pilot certificate will permit training for either a recreational or a private pilot certificate. With only one student pilot certificate, a student pilot has the flexibility to decide whether to seek a private pilot certificate or a recreational pilot certificate after training is well under way. The one-student-pilot certificate approach is sensible because flight training in preparation for the first solo flight is not any different for whichever certificate is being sought. Skills and knowledge necessary for solo flight are common to both recreational and private pilots.

If the student pilot chooses to pursue a recreational pilot certificate, rather than a private pilot certificate, the student need not meet the requirements of § 61.93. Since the recreational pilot is restricted to a 50 nautical mile radius from an airport where flight instruction has been received (see "Operating Restrictions"), no solo cross-country endorsement is required. If the recreational pilot subsequently decides to pursue a private pilot certificate, this will be done through a series of endorsements to include receiving the cross-country solo training of § 61.93.

This final rule includes two new regulations for student pilots that were proposed in the NPRM. The first (§ 61.87(b))is that student pilots will be required to pass a written examination before they will be permitted to fly solo. The second (§ 61.89(a)(6) and (7)) is that student pilots will not be permitted to fly solo if the visibility is below 3 statute miles during the day or 5 statute miles at night, and when the flight cannot be made without visual reference to the surface. The NAFI committee recommended a pre-solo written examination as a tool to help ensure that student pilots have basic knowledge of the flight rules and operating parameters of their aircraft. Seventy-five commenters approve of the pre-solo written requirement. Only 23 commenters oppose such a requirement. Several commenters are concerned about the quality and standardization of written examinations developed and administered by flight instructors. The FAA will develop and publish an advisory circular to provide guidance to flight instructors for developing and administering the pre-solo written examination. Most organized flight schools already use pre-solo written examinations. The requirement for

completing a pre-solo written examination prior to the first solo flight is adopted as proposed. The instructor would be required to retain a record of the date and results of this test under the record retention requirements of Part 61.

The FAA adopts from the NPRM a prohibition against student pilots flying solo when the visibility is below 3 statute miles during the day or 5 statute miles at night. There have been numerous reported cases of student pilots becoming lost or disoriented in marginal VFR conditions. A general prohibition against student pilots operating in marginal weather should alleviate much of this problem. Commenters addressing this issue oppose the proposed rule because it included certain private pilots with fewer than 400 flight hours in the prohibition. The proposal to include private pilots in this provision is not adopted in the final rule. The FAA agrees that such a change to the limitations of the private pilot certificate is not appropriate for this rulemaking. This matter may be reviewed in a future rulemaking project.

Section 61.89(a)(8) is also new and prohibits a student pilot from acting as PIC of an aircraft in a manner contrary to any limitations placed in the pilot's logbook by the instructor. While not actually imposing an additional limitation, § 61.89(a)(8) serves to clarify already existing policies.

Pilot Qualifications

The differences between the proposed qualifications for recreational pilots and those currently required for private pilots were discussed in the proposal. The three areas involved were: (1) Minimum age, (2) medical requirements, and (3) knowledge of the English language. The proposal retained the 17-year age limitation for the recreational pilot. Approximately 40 percent of the documents received on this issue support the proposed age requirement. The remaining comments are split between those suggesting a lower minimum age and those recommending that the minimum age be raised.

Those commenters who recommend lowering the minimum age for recreational pilots cite the 16-year minimum age requirement for glider and free balloon private pilots. The FAA has found that gliders and free balloons are far less complex, easier to operate, and slower than powered aircraft. There is no evidence to suggest that an equivalent level of safety could be attained by setting a lower minimum age for recreational pilots. Therefore, § 61.96(a) requires a minimum age of 17.

The NPRM listed alternative medical requirements for recreational pilots requiring either a third-class medical certificate, as is the case for private pilots, or requiring a certification by recreational pilot applicants that they have no known medical defects that would interfere with their ability to safely operate an aircraft. The NPRM also solicited recommendations for additional alternatives in determining a person's medical fitness.

An overwhelming majority of the comments received on this issue favor self-certification. Many of these commenters state that they do not qualify for a third-class medical certificate and that they would be able to fly powered aircraft if the rule allowed self-certification. Others cite the self-certification rules for pilots of gliders and free balloons as justification for medical self-certification of recreational pilots.

Commenters who favor a third-class medical requirement also presented their concerns. They note that pilots could be unaware of medical problems, and pilots with mental or neurological problems or drug dependencies could certify to their own good health without regard for the public safety.

The FAA shares the concerns of the commenters favoring a third-class medical requirement. A self-certification rule would allow many medically unqualified pilots to endanger the public by flying with physical defects that might affect their ability to operate an aircraft. The intent of a self-certification rule is not to allow medically unqualified pilots to fly aircraft but to save costs for pilots when safety is not derogated by allowing self-certification. The fact that some commenters to this rulemaking believe that they would be permitted to operate powered aircraft under a self-certification rule, although they are medically disqualified from receiving a third-class medical certificate, weighs heavily against adoption of a rule allowing self-certification.

Although pilots of free balloons and gliders are permitted to certify to their own health, the FAA requires all pilots of powered aircraft to possess a valid medical certificate issued under Part 67 of the Federal Aviation Regulations. Balloons and gliders typically require less demanding training and operate in sparsely populated areas. These unpowered aircraft are far less complex and operate at slower speeds than powered aircraft. Recreational pilots will be licensed to operate aircraft that could have cruise speeds in excess of 200 miles per hour.

After extensive review and deliberation, the FAA has determined that there is no basis for deleting the third-class medical requirement for recreational pilots simply because they would be restricted to small, single-engine aircraft and airspace in which communication with air traffic control is not required. Therefore, when exercising the privileges of the recreational pilot certificate, § 61.96(c) requires the pilot to hold a valid third-class medical certificate.

The third pilot requirement discussed in NPRM 85-13 concerned the airman's knowledge of the English language. The proposed rule did not require an applicant for a recreational pilot certificate to be able to read, speak, and understand the English language. The rationale for excluding the English language requirement for recreational pilots was that recreational pilots would be precluded from operating in airspace in which radio communication is required.

Only 10 commenters favor this rule, while 280 commenters oppose it. The opponents question whether a person who is unable to read, speak, and understand the English language could safely operate an aircraft that has manuals, limitations, gauges, and placards written in English. Furthermore, a pilot must be able to read and understand sources of aviation information such as the Airman's Information Manual, Federal Aviation Regulations, and weather reports and forecasts that are also in English. The FAA agrees with these concerns, and § 61.96(b) of the final rule requires that applicants for a recreational pilot certificate be able to read, speak, and understand English.

The requirement that a recreational pilot must pass an oral test was not included in the NPRM. To make the recreational pilot certification consistent with other pilot certifications, § 61.96(e) of the final rule includes such a requirement.

Aircraft Restrictions

The NPRM proposed prohibiting recreational pilots from acting as pilot-in-command of any aircraft that is certificated:

(1) For more than four occupants (except in the case of a gyroplane which could only be single-place);

(2) For more than one powerplant;

(3) For a powerplant of more than 180 horsepower; or

(4) For retractable landing gear.

The proposal would have further restricted recreational pilots by limiting them to airplanes, helicopters, and

gyroplanes. The certificate could not be used for gliders, airships, or free balloons.

Several commenters question the single-occupant limitation on gyroplanes, pointing out that two-place gyroplanes are less complex and easier to operate than helicopters. Furthermore, many training facilities use two-place gyroplanes, which would not be available to recreational pilots under the proposed rule. The FAA agrees that the single-place limitation on gyroplanes is unduly restrictive and has changed this restriction. Section 61.101(b)(1)(i) of the final rule allows recreational pilots to act as pilot-in-command of any gyroplane that complies with the other restrictions set forth above.

The NAFI proposal restricted the type of aircraft that could be operated by a recreational pilot to those with no more than two seats. Such a limitation is consistent with the basic premise that a recreational pilot certificate is to be used for recreational purposes, not for transportation. However, as pointed out in comments to the NAFI proposal, there are many basic aircraft with seating capacities of four seats and often these are used for student training or recreational flying. The FAA agreed with those comments and, consequently, Notice 85–13 proposed that recreational pilots be restricted to operating aircraft with no more than four seats.

Several commenters to the Notice suggest that recreational pilots be restricted to carrying no more than one passenger. Also, approximately 100 commenters agree with the four-seat occupancy limitation.

The FAA agrees that a maximum of one passenger is appropriate for the recreational pilot, and § 61.101(a)(1) provides for such a limitation. Further, the FAA has determined that limiting recreational pilots to two-seat aircraft is unnecessarily restrictive. Therefore, in accordance with § 61.101(b)(1)(i), a recreational pilot may fly a basic aircraft with a seating capacity of four or less.

The Notice proposed restricting recreational pilots to aircraft with one engine of no more than 180 horsepower and fixed landing gear. The comments were almost evenly divided for and against the 180-horsepower limitation. A few commenters object to the fixed landing gear restriction.

The greatest differences in systems complexity, control characteristics, and performance of aircraft are between those aircraft of more than 180 horsepower and retractable landing gear and those aircraft of 180 horsepower or less and fixed landing gear. Therefore, §§ 61.101(b)(1) (iii) and (iv) of this final rule is adopted as proposed in the NPRM.

Operating Restrictions

The Notice limited recreational pilot flights to a 50 nautical mile radius from the departure airport. The intent of this restriction was to keep the pilot over familiar terrain and in close proximity to a familiar airport to facilitate a return if inclement weather were encountered and to reduce the risk of a pilot becoming lost.

Nearly 1,250 commenters object to the 50 nautical mile limit as too restrictive, impractical, and unenforceable. Approximately 200 commenters agree that the 50 nautical mile limit is consistent with the spirit of the recreational pilot certificate.

The creation of the recreational pilot certificate is an attempt to make aviation available to would-be enthusiasts who are precluded from flying because of the cost of training for a private pilot certificate. Since the recreational pilot is not required to be trained in two-way radio communications with Air Traffic Control (ATC), radio navigation, or basic attitude instrument flying, it is necessary to restrict the recreational pilot from operating in areas where the lack of training may have a negative effect on safety. The recreational pilot certificate is geared for sport and recreation only, not for transportation, and to serve that purpose, a 50 nautical mile limit is appropriate.

Several commenters state that the 50 nautical mile radius restriction from the departure airport could be defeated by effectively hopping cross-country in 50 nautical mile increments. Recreational pilots are not required to have training in cross-country flying. Therefore, cross-country flying in such a manner is not consistent with the intended use of a recreational pilot certificate. To keep the recreational pilot over familiar territory and near a familiar airport, § 61.101(a)(3) of the final rule specifies that a recreational pilot may act as pilot-in-command only on flights 50 nautical miles or less from an airport at which ground and flight instruction was received and only if the flight lands at an airport within 50 nautical miles of the departure airport.

Operating only over familiar territory not only assures an acceptable level of safety for the recreational pilot with respect to possibly becoming lost, it also assures that the recreational pilot will be familiar with landmarks that define boundaries of areas in which operations are not permitted. Such areas would include TCAs and ATAs. Knowledge of the area and typical nearby air traffic operations will be emphasized in recreational pilot training to increase the safety of operations.

The recreational pilot must carry the logbook that shows the endorsement by an authorized instructor, indicating all required training has been completed. If the recreational pilot subsequently moves to a different airport, flight instruction must be received at that airport and the logbook appropriately endorsed again.

The proposed rule also would have prohibited recreational pilots from flying between sunset and sunrise. The majority of comments received addressing the daylight-only issue favor the restriction. Recreational pilots are not required to be trained in night operations and, therefore, must be restricted from operating an aircraft between sunset and sunrise. Section 61.101(b)(6) of the final rule incorporates this prohibition.

The NPRM proposed prohibiting recreational pilots from flying above 10,000 feet MSL, or 2,000 feet AGL, whichever is higher. Several hundred commenters object to the altitude restriction, outnumbering proponents of the proposal 12 to 1. Dissenting commenters argue that the limits are arbitrary. The 10,000-foot limit was selected because it is the established boundary between high-speed and low-speed traffic. There is no significant advantage to selecting a maximum altitude less than 10,000 feet, and by doing so, a new altitude boundary would be introduced, thus complicating the overall air space definition. Furthermore, if all operations of recreational pilots are compressed into a smaller airspace, the risk of mid-air collisions will be increased. Because recreational pilots are not authorized to fly in the cross-country environment, there is no reason to establish a limit higher than 10,000 feet MSL. The 2,000-foot AGL alternate limit provides for operation in mountainous areas where safe clearance of terrain would require an MSL altitude above 10,000 feet MSL.

A minimum visibility of 3 statute miles in all airspace was proposed in the NPRM. Most commenters agree with the proposal. The visibility restriction will prohibit the recreational pilot from flying when the visibility is marginal and the likelihood of accidental encounters with instrumental meteorological conditions is greater. The 3 statute mile minimum visibility limitation will apply in both controlled and uncontrolled airspace so that visibility limitations for recreational pilots will be the most restrictive and

related safety margins will be larger than for other pilots, consistent with the recreational pilot training and experience requirements.

Sections 61.101(b) (8) and (9) of the final rule incorporates the altitude and visibility limitations. These limitations are as proposed.

The NPRM proposed restricting recreational pilots from landing at airports with operating control towers. The 438 commenters who oppose the restriction contend that certain airports without control towers are busier than those with towers, and that in some areas there are no non-tower airports, thereby requiring a recreational pilot to drive many miles to be able to fly.

Recreational pilots are not required to have training in radio communications or air traffic control procedures. Therefore, in the interests of safety, recreational pilot privileges do not include flying at airports with operating control towers, in airspace where communication with air traffic control is required. The identification of such areas and an emphasis on remaining well clear of these areas will be an important part of the instructions required for every 50 nautical mile circle where a recreational pilot is authorized to fly. It should be noted that any further regulatory actions that increase the amount of limited use airspace or increase requirements for equipment to operate in such airspace (for example, altitude reporting equipment) will be compatible with the recreational pilot privileges and limitations because a fundamental objective of the rule is to keep recreational pilots out of all types of airspace where traffic densities require special equipment or procedures. The recreational pilot certificate is intended to be used by persons desiring to fly for sport or recreation which generally does not involve operations where radio communications or special equipment are required. It should be noted, however, that under § 61.98 a recreational pilot is required to have instruction in emergency procedures and in collision avoidance techniques. This instruction would include use of any radio equipment, including a transponder, if installed.

No commenters object to the proposed restrictions regarding international flights, sales demonstrations, and charitable flights. The aeronautical experience requirements for the recreational pilot certificate do not satisfy the international requirements for this class of certificate as established by the International Civil Aviation Organization. Therefore, § 61.101(b)(11) does not permit international flight. Since the recreational pilot certificate is intended for sport and recreational use only, restrictions regarding sales demonstrations and charitable flights do not infringe on that use. Section 61.101(b) (12) and (13) incorporates these restrictions as proposed.

Several commenters note that the Notice had no prohibition against recreational pilots towing any objects and suggest that this restriction be added. The FAA agrees. The additional skills and complex maneuvers involved in aerial towing go beyond the training of a recreational pilot. Accordingly, this restriction is included among the limitations of recreational pilots in § 61.101(b)(14).

An additional limitation has been added to the final rule which restricts recreational pilots from acting as pilot-in-command of an aircraft without visual reference to the surface. Since recreational pilots will not be trained in maneuvering the aircraft solely by reference to the instruments, they will not be authorized to fly without visual reference to the ground. Therefore, § 61.101(b)(10) restricts recreational pilots from flying above a solid overcast layer of clouds. Visual reference to the ground must constantly be maintained.

The NPRM proposed that the recreational pilot complete a course of instruction covering dead reckoning. This requirement is not included in the final rule as it requires training for procedures that would not be needed by the recreational pilot.

Several hundred commenters oppose the creation of a recreational pilot certificate with so many limitations, claiming that the rule as presented in the NPRM would not allow a recreational pilot to earn additional certificates and ratings. The intent of the proposal was to create a certificate that would work as a building block toward other certificates and ratings. Section 61.101(f) of this final rule will permit recreational pilots to work toward an additional certificate or rating. They must meet appropriate aeronautical knowledge and training requirements and must carry a logbook that has been properly endorsed by an authorized flight instructor (an appropriately rated instructor certificated in accordance with Part 61).

With the appropriate endorsements from an authorized flight instructor as specified in § 61.101(g) and (h), a recreational pilot may fly an aircraft for which that pilot does not hold an appropriate category or class rating, at night (provided flight visibility is no less than 5 statute miles), in airspace that requires communication with air traffic control, or in excess of 50 nautical miles from an airport at which flight instruction was received. These flights are required to be made without any passengers and must be for the purpose of obtaining additional certificates or ratings.

In recent months, the FAA has received a number of questions asking what flight instruction received from foreign flight instructors may be credited toward the requirements for a pilot certificate under the Federal Aviation Regulations. The concern arises from § 61.3(d) which provides that only the holder of a flight instructor certificate issued under Part 61 may give instruction required for solo flight, for solo cross-country flight, or for the issue of a certificate under Part 61. That paragraph specifically excepts lighter-than-air instruction and instruction in air transportation by an airline transport pilot. Section 61.41(b), however, is also an exception to § 61.3(d) and provides that flight instruction may be credited toward the requirements for a pilot certificate or rating issued under Part 61, if it is received from a flight instructor who is authorized to give that flight instruction by the licensing authority of a foreign contracting State to the Convention on International Civil Aviation and the flight instruction is given outside the United States. Flight instruction received from an Armed Force of either the United States or a foreign contracting State to the Convention on International Civil Aviation in a program for training military pilots may also be credited toward certification or rating requirements under Part 61.

Section 61.41 does not authorize a military flight instructor or a flight instructor licensed by a foreign contracting State to the Convention on International Civil Aviation to make the endorsements specified in § 61.3(d)(3) ("Endorse a student pilot certificate or logbook for solo operating privileges") or elsewhere in Part 61, or to provide the written statement required by § 61.39. While the endorsements specified in § 61.3(d)(2) ("Endorse a pilot logbook to show that he has given any flight instruction") are not literally permitted by the words of the regulations, § 61.41 has been interpreted to allow these endorsements since they are the customary means of evidencing that the required instruction has been given. Thus, an endorsement of a pilot logbook by a military flight instructor or a flight instructor licensed by a foregin contracting State to the Convention on International Civil Aviation, which shows that flight instruction has been received, may be permitted as evidence

that the training requirements for a pilot certificate or rating issued under Part 61 have been accomplished.

While the scope of this rulemaking is limited, the words "authorized instructor certificated under this part" have been used wherever applicable to clarify the intent of the specific regulation. The FAA intends to add clarifying language throughout Part 61 in subsequent rulemaking involving other provisions of the part.

Sections 61.193 and 61.195 (Flight instructor authorizations and limitations) have been expanded to incorporate the endorsements for recreational pilots. Although the changes to these sections were not specifically addressed in the NPRM, they are necessary for the recreational pilot certificate to serve as a building block toward other certificates and ratings. These changes are clearly consistent with the intent of the recreational pilot certificate and with numerous comments received. Other changes to § 61.193 are purely editorial in nature for the purpose of correcting reference numbers. Sections 61.23 (Duration of medical certificates), 61.31 (General limitations), and 61.51 (Pilot logbooks) have also been editorially revised to reference recreational pilots.

Training

To reduce the cost of training, recreational pilot applicants will not be required to receive training in some private pilot operations. Specifically, recreational pilot applicants will *not* be required to receive training in the following areas: (1) Operations at controlled airports, (2) radio communications, (3) controlling and maneuvering the aircraft solely by reference to instruments, (4) dead reckoning and radio navigation, and (5) night flying. To maintain an adequate level of safety, recreational pilots will have operational restrictions that are commensurate with those limited training requirements.

As discussed in the "Operating Restrictions" section of this preamble, recreational pilots will not be authorized to operate in TCAs or in other airspace where communication with air traffic control is required. Therefore, training in controlled airport operations or radio communications is not required. However, an essential part of all recreational pilot training will be detailed and complete familiarization with all areas that would require radio communication to assure that such areas can be accurately identified. For each 50 nautical mile area in which a recreational pilot is authorized to operate, instruction will cover identification of landmarks that will help keep the recreational pilot well clear of any airspace requiring radio communication such as TCAs, Airport Radar Service Areas (ARSAs), and ATAs. This emphasis on visual reference points to identify airspace where recreational pilots are not authorized to operate will decrease the risk of conflicts with high-performance aircraft.

Furthermore, recreational pilots will be instructed on the location of typical air carrier routes and arrival and departure paths in the local area for all high-performance aircraft. The recreational pilot will be taught to identify these paths with respect to visual ground reference points. It should be noted that this type of instruction is consistent with the FAA's current emphasis on "back to basics" for all pilots.

The FAA has analyzed the very high density traffic areas. Through charting techniques, TCA, ARSA, and ATA airspace was identified and areas available for use by recreational pilots were also identified. The analysis shows that only very limited operations by recreational pilots will be allowed near any of the major traffic hubs. The analysis also shows that emphasis should be placed upon instruction that will teach recreational pilots how to maintain a safe distance from the boundaries of various types of airspace where traffic is under ATC control. This emphasis will be carried through in training programs and guidance material provided by the FAA in conjunction with the recreational pilot certificate and enforcement of the rule.

Recreational pilots will not be authorized to fly more than 50 nautical miles from the airport at which they received instruction. Also, recreational pilots will not be authorized to fly when the visibility is less than 3 statute miles. These restrictions provide additional assurance that a recreational pilot will not be operating in an environment where the aircraft must be controlled and maneuvered solely by reference to the instruments, and the pilot will remain over or near familiar territory. Therefore, training in dead reckoning, radio navigation, and controlling and maneuvering an aircraft solely by reference to instruments is not required.

Recreational pilots are restricted from operating aircraft between sunset and sunrise. Therefore, the recreational pilot will not be required to receive any night training.

The NPRM proposed a minimum number of instructional flights in lieu of the current minimum standard flight hour requirement for aeronautical experience. This concept is not adopted in the final rule. (See "Changes Affecting Student and Private Pilots" for further explanation.)

The FAA has determined that a recreational pilot applicant will be required to have a minimum of 30 flight hours. (See §§ 61.99 and 61.100.) Fifteen of these hours must be flight instruction from an authorized flight instructor, including at least 2 hours outside the vicinity of the airport at which instruction is given, with a minimum of three landings at another airport at least 25 nautical miles from the departure airport, and 2 hours in preparation for the flight test within the 60 days preceding the test. Fifteen flight hours (10 in the case of gyroplanes) must be solo flight in the category of aircraft for which a rating is sought.

The required minimum experience for the recreational pilot was derived in a manner to provide a logical relationship between recreational pilot certificates and private pilot certificates. A private pilot must have at least 40 hours of flight experience, of which 20 hours must be with an instructor. At least 13 of these hours (3 dual and 10 solo) relate to cross-country operations, and 3 hours relate to night flying. Since most of this experience is not necessary for the intended operations of a recreational pilot, the recreational pilot is required to have at least 30 hours of flight experience, 10 hours fewer than the private pilot.

The final rule also provides for licensing pilots who live on islands with only one airport. If more than 10 nautical miles of water must be crossed to get to another airport, the applicant need not comply with the requirement of § 61.99(a)(1)(i). In that situation, the recreational pilot license will have an additional restriction that prohibits the carriage of a passenger more than 10 nautical miles from the island on which the flight training was received. This restriction parallels the private pilot limitations and appears in § 61.99(b) of the final rule.

Currency

The NPRM discussed a number of currency requirements that would have applied to recreational pilots and certain private pilots. The resolution of these issues as they apply to private pilots is discussed in the "Changes Affecting Student and Private Pilots" section of this preamble. With regard to the recreational pilot certificate, these proposals are discussed below.

Three currency requirements, in addition to those currently applicable to private pilots, were proposed for the

recreational pilot. They were: (1) An annual 2-hour training requirement consisting of 1 hour of ground instruction and 1 hour of flight instruction, (2) an annual flight review for pilots with fewer than 400 flight hours, and (3) flight instruction and a logbook endorsement if more than 180 days have passed since a recreational pilot with fewer than 400 flight hours has acted as pilot-in-command of an aircraft.

The annual flight review and 180-day pilot-in-command requirement will provide a means to monitor these pilots' proficiency levels and will require these pilots to demonstrate their competency and proficiency prior to exercising the privileges of their pilot certificate. NTSB accident data show that accident rates are much higher for non-instrument-rated pilots with fewer than 400 flight hours than for non-instrument-rated pilots with more than 400 flight hours. A more frequent review of skills and knowledge for recreational pilots is expected to result in more proficient pilots.

More than 1,300 commenters oppose the annual training requirement, while only 84 favor it. Those opposed were private pilots resisting any change to their private pilot license, especially changes that would result in an additional cost to maintain their certification. The FAA has considered the currency requirements and concludes that the annual training requirements are unnecessary if the annual flight review and 180-day pilot-in-command rule are implemented. If a recreational pilot does not successfully accomplish an annual flight review, then the flight instructor conducting the review will suggest appropriate additional instruction. Therefore, the annual 2-hour training requirement, as proposed in the Notice, is not adopted in the final rule. The second proposed currency requirement, the annual flight review, is incorporated in § 61.56(d) of the final rule and applies to recreational pilots with fewer than 400 flight hours and non-instrument-rated private pilots with fewer than 400 flight hours. For these pilots, the annual flight review is defined as a minimum requirement of 1 hour of flight instruction and 1 hour of ground instruction. In accordance with the third proposed currency requirement, § 61.101(d) of the final rule requires recreational pilots with fewer than 400 hours to receive flight instruction and a logbook endorsement if more than 180 days have passed since they have acted as pilot-in-command of and aircraft.

These rules specifically allow the flight instructor giving the flight review to combine the 180-day pilot-in-command instruction with the annual flight review requirement. However, it is left to the flight instructor's discretion to determine whether it is appropriate to combine these requirements. Flight instructors should consider the recreational pilot's degree of competency and proficiency, the flying activity, and the complexity of the operating environment.

Regulatory Evaluation

New § 61.56—Flight Review

The benefits expected to result from this amendment are the avoided casualty costs resulting from accidents prevented because of the annual flight review that non-instrument-rated private pilots with less than 400 hours flight time will be required to receive. Currently these pilots are subject to the biennial flight review required of all pilots-in-command.

Accident rates have historically been about 60 percent higher for these low-time private pilots than for more experienced private pilots. Although one commenter attempts to demonstrate that the 400-hour total-flight-time criterion is invalid, the accident and activity data provided do not distinguish between types of pilot certificates, and no information on the composition of the activity base is included. The data and corresponding analysis are too general to support any specific conclusions.

The costs of the amendment primarily involve the additional aircraft operating costs and the labor cost of the flight instructor's time that will be incurred for pilots to comply with the flight review requirement. A sensitivity analysis approach has been used. Potential fatal accident rate reductions that could be achieved by the middle year of the 8-year period following adoption of the amendment have been estimated, and the costs-per-fatality-avoided that correspond to these accident rate reductions have been estimated. These mid-period fatal accident rate reductions have been assumed to approximate the average reduction over the entire period. Further, the cost-benefit relationships estimated for the midyear of the period are expected to remain approximately constant throughout the period because both costs and benefits vary together in proportion to activity level.

Historical accident data were reviewed for single-engine operations to determine ratios of the occurences of accidents and casulaties of all types for every occurrence of a fatal accident. These ratios enable estimates to be made of changes in overall accident and casualty rates that would be associated with a change in fatal accidental rates. These ratios have been applied to the standard values (adjusted for inflation) prescribed in the FAA's *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs* (Report No. FAA-APO-81-3 for serious injuries and for destroyed and damaged aircraft, yielding an average injury and property damage cost of approximately $361,000 (1986 dollars) from all accidents for every occurrence of a fatal accident. This value is the benefit of avoided injuries and hull losses realized for every fatal accident prevented. Deducting these quantifiable benefits (based upon an estimated potential accident rate reduction) from the total compliance costs of this amendment allow the cost-per-fatality-avoided to be determined.

Completion of the flight review will require a minimum of 1 hour of dual flight instruction and 1 hour of ground instruction. Based upon an $18 per hour instructor's fee, and a typical rental rate of $45 per hour for a non-retractable, single-engine airplane, the cost for each pilot to comply with the annual flight review has been estimated at $81. A total average annual cost of $6.4 million has been estimated for all affected private pilots to comply with the amendment. This total is based upon the FAA'S forecast of the future private pilot population. Adjustments have been made for the 13 percent of private pilots that hold instrument ratings, the approximately 50 percent of private pilots with more than 400 hours, a 10 percent upward adjustment for those pilots who require more than the minimum time to satisfactorily meet the flight review requirement, and those costs that would be incurred because of the existing biennial flight review requirement.

The FAA estimates that the subgroup of private pilots affected by this amendment would experience an average of about 80 fatal accidents annually in the absence of the new annual flight review requirement. Should the amendment result in an average 3 percent reduction in fatal accident rates, then an average of 4.8 fatalities will be avoided per year, and $866,000 in quantifiable benefits will be realized annually in avoided property

damage and injury costs. Deducting the quantifiable benefits from the total annual compliance cost of $6.4 million gives that portion of costs attributable to preventing fatalities. The cost-per-fatality-avoided, if a 3 percent reduction in fatal accident rates is achieved, is estimated at $1.1 million. Similarly, should the amendment be more successful and result in an average 5 percent reduction in fatal accident rates, then an average of 8 fatalities will be avoided per year, $1.4 million in quantifiable benefits in avoided property damage and injury costs will be achieved, and the cost-per-fatality-avoided will be $620,000.

A regression analysis of the general aviation fatal accident rate data indicates that following implementation of the biennial flight review requirement, which became mandatory on November 1, 1974, there was a one-time 10 percent decrease in fatal accident rates beyond the existing long-term declining trend in accident rates (i.e., a statistically significant discontinuity was observed in the downward sloping curve of accident rates as a function of time). Although this regression analysis reflects all general aviation activity, a review of accident data for the low-time, non-instrumental-rated private pilots affected by this amendment indicates that this subgroup of pilots also experienced substantial reductions in accident rates following implementation of the biennial flight review. Current accident rates for private pilots with less than 400 hours total flight time, however, still remain approximately 60 percent higher than the rates for private pilots with more than 400 hours flight time. Therefore, further improvement is warranted for these low-time pilots. Because of the accident rate reductions observed following implementation of the biennial flight review, the FAA expects that a 3 to 5 percent reduction in average fatal accident rates will be achieved by the low-time private pilots affected by the annual flight review and that the acceptable costs estimated for each fatality avoided will result. (Although this review of low-time private pilots has focused on powered aircraft operations, accident data indicate that approximately 58 percent of nonpowered aircraft accidents involve pilots with less than 400 hours of total flight time.) These findings are summarized in Table 1.

TABLE 1.—SUMMARY OF THE COST-BENEFIT RELATIONSHIPS ESTIMATED FOR THE ANNUAL FLIGHT REVIEW REQUIREMENT

	Average 3 percent reduction in fatal accident rates	Average 5 percent reduction in fatal accident rates
Average annual fatal accidents avoided	2.4	
Annual fatalities avoided	4.8	8
Annual property damage and injury costs avoided	$866,000	$1.4 mil
Cost-per-fatality-avoided (based upon an average total annual compliance cost of $6.4 million)	$1.1 mil	$620,000

Amended Part 61—Subpart C—Student and Recreational Pilots

The new recreational pilot certificate category will provide prospective pilots with a lower cost alternative to obtaining a private pilot certificate for those persons interested in flying a basic, experimental, or homebuilt aircraft in close proximity to a home airport that is not in airspace requiring communication with air traffic control facilities. Recreational pilot candidates will have the option of obtaining a simpler pilot certificate, with the privileges of that certificate limited because of the areas of instruction that will be eliminated from the existing private pilot curriculum (night flying, attitude instrument flight, radio navigation and dead reckoning, and radio communications). The student recreational pilot certificate category originally proposed in the Notice has not been adopted. Rather, the existing student pilot certificate category has been amended to permit training for either a recreational or private pilot certificate. Further, recreational pilots will be able to use the recreational pilot certificate as a building block toward earning the private pilot and other more advanced certificates and ratings. Establishment of the recreational pilot certificate category will improve the attractiveness of flying as a hobby in comparison to other forms of recreational activity from which the public may choose.

An estimate has been made of the savings in flight training costs that a recreational pilot applicant may achieve in comparison to a private pilot applicant. The minimum flight experience requirements for a recreational pilot certificate will be 15 hours of dual instruction and 15 hours of solo flight, compared to 20 hours in each category required for a private pilot certificate. However, very few students earn their private pilot certificates in the minimum prescribed hours. FAA records indicate that the average private pilot applicant requires about 71 hours, composed of 42 hours of dual instruction and 29 hours of solo flight, to complete certification. The FAA expects that the average recreational pilot applicant will also require more than the minimum prescribed hours, and will typically be able to earn a certificate in 45 to 55 total flight hours, distributed evenly between dual instruction and solo flight. This will result in an average reduction of 16 to 26 flight hours of training for a recreational pilot in comparison to a private pilot.

In the Notice, the FAA estimated that the minimum reduction in training would only be on the order of 10 hours total flight time. However, inadequate allowance was made in the evaluation of the Notice for reduced training in cross-country procedures because of the 50 nautical mile distance restriction that will limit recreational pilot activities.

Aircraft rental rates for basic two-place and four-place airplanes typically used in flight instruction range from about $35 to $55 per hour. Flight instructors' fees typically range from about $15 to $20 per hour. Based upon these values, the average 71 flight hours required of private pilot applicants and the estimated 45 to 55 average flight hours recreational pilot applicants are expected to require to complete certification, the FAA estimates the savings that a prospective pilot may realize by obtaining a recreational certificate instead of a private certificate. These comparative flight training costs are summarized in Table 2.

To the extent that two-place homebuilt and experimental aircraft, equipped with dual controls and suitable for basic flight training, are available, some additional savings over the estimates in Table 2 may be achieved by recreational pilot applicants. (This evaluation has focused on recreational pilot applicants receiving training in airplanes because that is the aircraft category in which most students receive training. However, similar arguments apply to those recreational pilot applicants receiving training in helicopters and gyroplanes.)

TABLE 2.—COMPARISON OF RECREATIONAL AND PRIVATE PILOT FLIGHT TRAINING COSTS

	Totals based on $35 airplane and $15 instructor hourly rates	Totals based on $55 airplane and $20 instructor hourly rates
Private Pilot—Average 71 Hours (42 hours dual and 29 hours solo)	$3,100	$4,750
Recreational Pilot—55 Total Hours (27.5 hours dual and 27.5 hours solo)	$2,350	$3,600
Percent Savings	24%	24%
Dollar Savings	$750	$1,150
Recreational Pilot—45 Total Hours (22.5 hours dual and 22.5 hours solo)	$1,900	$2,900
Percent Savings	39%	39%
Dollar Savings	$1,200	$1,850

Once initial certification has been completed, recreational pilots are not expected to realize any appreciable costs savings from flying as a continuing hobby in comparison to the costs they would have incurred as private pilots because recreational pilots will fly the same aircraft that are typically used today by private pilots for recreational flying.

For those individuals who now must become private pilots, but would prefer the simpler recreational certificate if it were available, savings in initial certification training costs of approximately 24 to 39 percent can be expected. For other members of the public, these savings will improve the attractiveness of flying as a hobby and provide an additional option to choose from in selecting recreational activities of all types.

Establishment of the recreational pilot certificate category is not expected to result in any appreciable implementation costs to the public, administrative costs to the FAA, or social costs related to higher accident rates.

The extent of recreational activitiy of all types is determined primarily by the level of disposable income available to the public. The decision to become a recreational pilot is completely voluntary. Should some individuals choose to become recreational pilots instead of pursuing alternative recreational activities, there will be a decrease in resources utilized in other recreational activities and an increase in resources used in recreational flying, but no net costs.

Flight schools are not expected to incur any appreciable costs in developing a training curriculum for recreational pilots because it will be the same as the existing curriculum for private pilots, only with certain items deleted.

The FAA is not expected to incur any appreciable increase in operating costs to accommodate recreational pilot activity. The highly restricted recreational pilot category is expected to be appropriate for only a small group of pilots. Adequate excess capacity will exist in the automated Flight Service Station (FSS) system to handle the weather briefings and flight plan filings of the limited number of recreational pilots. These pilots are not expected to increase the system workload by more than 5 to 10 percent, and their activity will primarily occur during off-peak periods for FSS facilities. Further, because recreational pilots will operate outside of the ATC system, ATC costs are not expected to increase either.

To avoid an increase in accident rates, the privileges of recreational pilots will be restricted in a manner intended to compensate for the areas in which they will not receive training. The most significant restriction is the 50 nautical mile distance restriction, intended primarily to keep recreational pilots from experiencing accidental encounters with instrument meteorological conditions (IMC). Recreational pilots will not have some of the usual safeguards against accidental encounters with IMC because they will not have received training in two-way radio communications, radio navigation, or basic attitude instrument flying. Restricting recreational pilots to 50 nautical miles from an airport at which instruction was received is intended to avoid circumstances that have historically accounted for a large portion of accidents experienced by VFR pilots, even though exposure to IMC is usually unintentional and, therefore, relatively limited. Recreational pilots are expected to be safe pilots in the types of flying for which they have been trained and authorized to conduct and, therefore, are not expected to have any higher accident rates than pilots trained to existing standards currently experience.

Amended § 61.87—Student Pilot Requirements for Solo Flight

This amendment requires student pilots to pass a written examination administered by the flight instructor prior to solo flight. Many flight schools already include such an exam in their training programs, and most prudent independent flight instructors require at least a pre-solo oral exam on these topics. Therefore, this amendment simply formalizes current practices and is not expected to result in any appreciable implementation costs. The FAA will incur incremental costs of about $10,000 to print and distribute an advisory circular on the pre-solo exam.

Amended § 61.89—Student Pilot General Limitations

This amendment would prevent a student pilot from acting as pilot-in-command of an aircraft when the flight or surface visibility is less than 3 statute miles during daylight hours or 5 statute miles at night, or without visual reference to the surface. Although under existing regulations student pilots technically can fly when the visibility is less than required by this amendment, prudent flight instructors rarely allow students to fly when visibility conditions are less than the revised standards and frequently require even better visibility conditions. Therefore, this amendment simply formalizes current practice and is not expected to impose any economic impact.

International Trade Impact Analysis

The various regulations adopted in this final rule will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the United States. The amendments primarily affect the domestic operations of individual student, private, and recreational pilots, not of businesses involved in the sale of aviation products or services. Even in those rare instances in which a low-time private pilot certificate holder exercises the privileges of that certificate in operations incidental to the business activities of a firm that engages in foreign trade, the cost impact of the amended regulations on the overall activities of such a firm would be negligible.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure, among other things, that small entities are not disproportionately affected by government regulations. The FAA has determined that under the criteria of the RFA, these amended regulations will not have a significant economic impact on a substantial number of small entities.

The various regulations adopted in this final rule will primarily affect the operations of individual student, private, and recreational pilots, not the activities of business entities. However, in those instances in which a private pilot certificate holder is also the sole proprietor of a small business, and the holder exercises the privileges of his or her certificate in operations that are incidental to that business, the individual cost of compliance with the annual flight review requirement (the only amendment affecting private pilots in this final rule), will fall far short of the annual threshold cost level of $3,666 (1986 dollars) prescribed in FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," for determining whether or not a rule will have a significant economic impact on a small entity of this type.

Paperwork Reduction Act

The reporting requirements in this document have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0021.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

None of the provisions of this final rule will result in compliance costs that exceed $100 million annually. Therefore, it has been determined that these amendments do not involve a rule change that is major under Executive Order 12291. In view of the substantial amount of public interest generated by the proposal and the Notice, this final rule is considered to be significant under Department of Transportation Policies and Procedures (44 FR 11034; February 26, 1979). The various regulations adopted in this final rule will primarily affect the operations of individual pilots, not the activities of business entities. Therefore, in accordance with the Regulatory Flexibility Act, I certify that these amendments will not have a significant economic impact, positive or negative, on a substantial number of small entities. A summary of the regulatory evaluation is printed in the preamble to this final rule, and a copy of the full regulatory evaluation is filed in the docket and may be obtained by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 61

Aviation safety, Student pilots, Eligibility requirements, Aeronautical knowledge, Operational experience, Cross-country flight privileges, Limitations.

Final Rule

Accordingly, Part 61 of the Federal Aviation Regulations (14 CFR Part 61) is amended as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for Part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983).

2. By amending § 61.5 by redesignating paragraphs (a) (1) (ii), (iii), and (iv) as (a)(1)(iii), (iv), and (v), respectively; and by adding a new paragraph (a)(1)(ii) to read as follows:

§ 61.5 Certificates and ratings issued under this part.

(a) * * *

(1) * * *

(ii) Recreational pilot.

* * * * *

3. By amending § 61.23 by revising paragraphs (a)(3), (b)(2) and (c) to read as follows:

§ 61.23 Duration of medical certificates.

(a) * * *

(3) The 24th month after the month of the date of examination shown on the certificate, for operations requiring only a private, recreational, or student pilot certificate.

(b) * * *

(2) The 24th month after the month of the date of examination shown on the certificate, for operations requiring only a private, recreational, or student pilot certificate.

(c) A third-class medical certificate expires at the end of the 24th month after the month of the date of examination shown on the certificate, for operations requiring a private, recreational, or student pilot certificate.

4. By amending § 61.31 by redesignating paragraphs (f)(2), (f)(3), and (f)(4) as (f)(3), (f)(4), and (f)(5), respectively; and by adding a new paragraph (f)(2) to read as follows:

§ 61.31 General limitations

* * * * *

(f) * * *

(2) The holder of a recreational pilot certificate when operating under the provisions of § 61.101 (f), (g), and (h).

* * * * *

5. By amending § 61.51 by revising paragraphs (c)(2)(i) and by adding a new paragraph (d)(3) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(c) * * *

(2) * * *

(i) A recreational, private, or commerical pilot may log pilot-in-command time only that flight time during which that pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated, or when the pilot is the sole occupant of the aircraft, or, except for a recreational pilot, when acting as pilot-in-command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted.

* * * * *

(d) * * *

(3) A recreational pilot must carry his or her logbook that has the required instructor endorsements on all solo flights—

(i) In excess of 50 nautical miles from an airport at which instruction was received;

(ii) In airspace in which communication with air traffic control is required;

(iii) Between sunset and sunrises; and

(iv) In an aircraft for which the pilot is not rated.

6. By adding a new § 61.56 to read as follows:

§ 61.56 Flight review.

(a) As used in this section, a flight review consists of a review of—

(1) The current general operating and flight rules of Part 91 of this chapter; and

(2) Those maneuvers and procedures which, in the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.

(b) No person may act as pilot-in-command of an aircraft, within the period specified in paragraph (c) or (d) of this section, as applicable, unless that person has—

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the pilot has satisfactorily accomplished the flight review.

(c) Except as provided in paragraph (d) and (e) of this section, each pilot must have complied with the requirements of this section since the beginning of the 24th calendar month before the month in which that pilot acts as pilot-in-command.

(d) Except as provided in paragraph (e) of this section, each recreational pilot who has logged fewer than 400 hours flight time and each non-instrument-rated private pilot who has logged fewer than 400 hours flight time must have complied with the requirements of this section since the beginning of the 12th calendar month before the month in which that pilot acts as pilot-in-command. The flight review required by this paragraph will consist of a minimum of 1 hour flight instruction and 1 hour ground instruction.

(e) A person who has, within the period specified in paragraphs (c) and (d) of this section, satisfactorily completed a pilot proficiency check conducted by the FAA, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section.

(f) The requirements of this section may be accomplished in combination with the requirements of § 61.57 and other applicable recency requirements, at the discretion of the instructor.

7. By amending § 61.57 by deleting the text of paragraphs (a) and (b) and marking them reserved; and by inserting a comma after the word "paragraph" in the next to last sentence of paragraph (c).

8. By amending § 61.69 by revising paragraph (a) to read as follows:

§ 61.69 Glider towing: Experience and instruction requirements.

* * * * *

(a) He holds a current pilot certificate (other than a student or recreational pilot certificate) issued under this part.

* * * * *

9. By revising the title of Subpart C to read as follows:

Subpart C—Student and Recreational Pilots

10. By revising § 61.81 to read as follows:

§ 61.81 Applicability.

This subpart prescribes the requirements for the issuance of student pilot certificates and recreational pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules and limitations for the holders of those certificates and ratings.

11. By revising the title of § 61.83 to read as follows:

§ 61.83 Eligibility requirements: Student pilots.

* * * * *

12. By revising the title and text of § 61.87 to read as follows:

§ 61.87 Solo flight requirements for student pilots.

(a) *General.* A student pilot may not operate an aircraft in solo flight unless that student meets the requirements of this section. The term "solo flight," as used in this subpart, means that flight time during which a student pilot is the sole occupant of the aircraft, or that flight time during which the student acts as pilot-in-command of an airship requiring more than one flight crewmember.

(b) *Aeronautical knowledge.* A student pilot must have demonstrated satisfactory knowledge to an authorized instructor, of the appropriate portions of Parts 61 and 91 of the Federal Aviation Regulations that are applicable to student pilots. This demonstration must include the satisfactory completion of a written examination to be administered and graded by the instructor who endorses the student's pilot certificate for solo flight. The written examination must include questions on the applicable regulations and the flight characteristics and operational limitations for the make and model aircraft to be flown.

(c) *Pre-solo flight training.* Prior to being authorized to conduct a solo flight, a student pilot must have received and logged instruction in at least the applicable maneuvers and procedures listed in paragraphs (d) through (j) of this section for the make and model of aircraft to be flown in solo flight, and must have demonstrated proficiency to an acceptable performance level as judged by the instructor who endorses the student's pilot certificate.

(d) For all aircraft (as appropriate to the aircraft to be flown in solo flight), the student pilot must have received pre-solo flight training in—

(1) Flight preparation procedures, including preflight inspections, powerplant operation, and aircraft systems;

(2) Taxiing or surface operations, including runups;

(3) Takeoffs and landings, including normal and crosswind;

(4) Straight and level flight, shallow, medium, and steep banked turns in both directions;

(5) Climbs and climbing turns;

(6) Airport traffic patterns including entry and departure procedures, and collision and wake turbulence avoidance;

(7) Descents with and without turns using high and low drag configurations;

(8) Flight at various airspeeds from cruising to minimum controllable airspeed;

(9) Emergency procedures and equipment malfunctions; and

(10) Ground reference maneuvers.

(e) For airplanes, in addition to the maneuvers and procedures in paragraph (d) of this section, the student pilot must have received pre-solo flight training in—

(1) Approaches to the landing area with engine power at idle and with partial power;

(2) Slips to a landing;

(3) Go-arounds from final approach and from the landing flare in various flight configurations including turns;

(4) Forced landing procedures initiated on takeoff, during initial climb, cruise, descent, and in the landing pattern; and

(5) Stall entries from various flight attitudes and power combinations with recovery initiated at the first indication of a stall, and recovery from a full stall.

(f) For rotorcraft (other than single-place gyroplanes), in addition to the maneuvers and procedures in paragraph (d) of this section and as allowed by the aircraft's performance and maneuver limitations, the student pilot must have received pre-solo flight training in—

(1) Approaches to the landing area;

(2) Hovering turns and air taxiing (for helicopters only) and ground maneuvers;

(3) Go-arounds from landing hover and from final approach;

(4) Simulated emergency procedures, including autorotational descents with a power recovery or running landing in gyroplanes, a power recovery to a hover in a single engine helicopter, or approaches to a hover or landing with one engine inoperative in multiengine helicopters; and

(5) Rapid decelerations (helicopters only).

(g) For single-place gyroplanes, in addition to the appropriate maneuvers

and procedures in paragraph (d) of this section, the student pilot must have received pre-solo flight training in—

(1) Simulated emergency procedures, including autorotational descents with a power recovery or a running landing;

(2) At least three successful flights in gyroplanes under the observation of a qualified instructor; and

(3) For nonpowered single-place gyroplanes only, at least three successful flights in a gyroplane towed from the ground under the observation of the flight instructor who endorses the student's pilot certificate.

(h) For gliders, in addition to the appropriate maneuvers and procedures in paragraph (d) of this section, the student pilot must have received pre-solo flight training in—

(1) Preflight inspection of towline rigging, review of signals, and release procedures to be used;

(2) Aerotows, ground tows, or self-launch;

(3) Principles of glider disassembly and assembly;

(4) Stall entries from various flight attitudes with recovery initiated at the first indication of a stall, and recovery from a full stall;

(5) Straight glides, turns, and spirals;

(6) Slips to a landing;

(7) Procedures and techniques for thermalling in convergence lift or ridge lift as appropriate to the training area; and

(8) Emergency operations including towline break procedures.

(i) In airships, in addition to the appropriate maneuvers and procedures in paragraph (d) of this section, the student pilot must have received pre-solo flight training in—

(1) Rigging, ballasting, controlling pressure in the ballonets, and superheating; and

(2) Landings with positive and with negative static balance.

(j) In free balloons, in addition to the appropriate maneuvers and procedures in paragraph (d) of this section, the student pilot must have received pre-solo flight training in—

(1) Operation of hot air or gas source, ballast, valves, and rip panels, as appropriate;

(2) Emergency use of rip panel (may be simulated);

(3) The effects of wind on climb and approach angles; and

(4) Obstruction detection and avoidance techniques.

(k) The instruction required by this section must be given by an authorized flight instructor who is certificated—

(1) In the category and class of airplanes, for airplanes;

(2) Except as provided in paragraph (k)(3) of this section, in helicopters or gyroplanes, as appropriate, for rotorcraft; and

(3) In airplanes or gyroplanes, for single-place gyroplanes.

(l) The holder of a commercial pilot certificate with a lighter-than-air category rating may give the instruction required by this section in—

(1) Airships, if that commercial pilot holds an airship class rating; and

(2) Free balloons, if that commercial pilot holds a free balloon class rating.

(m) Flight instructor endorsements. No student pilot may operate an aircraft in solo flight unless that student's pilot certificate and logbook have been endorsed for the specific make and model aircraft to be flown by an authorized flight instructor certificated under this part, and the student's logbook has been endorsed, within the 90 days prior to the student operating in solo flight, by an authorized flight instructor certificated under this part who has flown with the student. No flight instructor may authorize solo flight without endorsing the student's logbook. The instructor's endorsement must certify that the instructor—

(1) Has given the student instruction in the make and model aircraft in which the solo flight is to be made;

(2) Finds that the student has met the flight training requirements of this section; and

(3) Finds that the student is competent to make a safe solo flight in that aircraft.

13. By amending § 61.89 by amending paragraph (a)(4) by deleting the word "or"; by amending paragraph (a)(5) by deleting the period and adding a semicolon after "British Columbia"; by adding new paragraphs (a)(6), (a)(7), and (a)(8); and by revising paragraph (b) to read as follows:

§ 61.89 General limitations.

(a) * * *

(6) With a flight or surface visibility of less than 3 statute miles during daylight hours or 5 statute miles at night;

(7) When the flight cannot be made with visual reference to the surface; or

(8) In a manner contrary to any limitations placed in the pilot's logbook by the instructor.

(b) A student pilot may not act as a required pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or regulations under which the flight is conducted, except when receiving flight instruction from an authorized flight instructor on board an airship and no person other than a required flight crewmember is carried on the aircraft.

14. By revising the title and text of § 61.93 to read as follows:

§ 61.93 Cross-country flight requirements (for student and recreational pilots seeking private pilot certification).

(a) *General.* No student pilot may operate an aircraft in solo cross-country flight, nor may that student, except in an emergency, make a solo flight landing at any point other than the airport of takeoff, unless the student has met the requirements of this section. The term cross-country flight, as used in this section, means a flight beyond a radius of 25 nautical miles from the point of departure.

(b) Notwithstanding paragraph (a) of this section, an authorized flight instructor, certificated under this part, may permit the student to practice solo takeoffs and landings at another airport within 25 nautical miles from the airport at which the student receives instruction if the flight instructor—

(1) Determines that the student pilot is competent and proficient to make those landings and takeoffs;

(2) Has flown with that student prior to authorizing those takeoffs and landings; and

(3) Endorses the student pilot's logbook with an authorization to make those landings and takeoffs.

(c) *Flight training.* A student pilot, in addition to the pre-solo flight training maneuvers and procedures required by § 61.87(c), must have received and logged instruction from an authorized flight instructor in the appropriate pilot maneuvers and procedures of this section. Additionally, a student pilot must have demonstrated an acceptable standard of performance, as judged by the authorized flight instructor certificated under this part, who endorses the student's pilot certificate in the appropriate pilot maneuvers and procedures of this section.

(1) For all aircraft—

(i) The use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(ii) Aircraft cross-country performance, and procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(iii) Cross-country emergency conditions including lost procedures, adverse weather conditions, and simulated precautionary off-airport approaches and landing procedures;

(iv) Traffic pattern procedures, including normal area arrival and

departure, collision avoidance, and wake turbulence precautions;

(v) Recognition of operational problems associated with the different terrain features in the geographical area in which the cross-country flight is to be flown; and

(vi) Proper operation of the instruments and equipment installed in the aircraft to be flown.

(2) For airplanes, in addition to paragraph (c)(1) of this section—

(i) Short and soft field takeoff, approach, and landing procedures, including crosswind takeoffs and landings;

(ii) Takeoffs at best angle and rate of climb;

(iii) Control and maneuvering solely by reference to flight instruments including straight and level flight, turns, descents, climbs, and the use of radio aids and radar directives;

(iv) The use of radios for VFR navigation and for two-way communication; and

(v) For those student pilots seeking night flying privileges, night flying procedures including takeoffs, landings, go-arounds, and VFR navigation.

(3) For rotorcraft, in addition to paragraph (c)(1) of this section and as appropriate to the aircraft being flown—

(i) High altitude takeoff and landing procedures;

(ii) Steep and shallow approaches to a landing hover;

(iii) Rapid decelerations (helicopters only); and

(iv) The use of radios for VFR navigation and two-way communication.

(4) For gliders, in addition to the appropriate maneuvers and procedures in paragraph (c)(1) of this section—

(i) Landings accomplished without the use of the altimeter from at least 2,000 feet above the surface;

(ii) Recognition of weather conditions and conditions favorable for cross-country soaring; and

(iii) The use of radios for two-way radio communications.

(5) For airships, in addition to the appropriate maneuvers and procedures in paragraph (c)(1) of this section—

(i) Control of gas pressure with regard to superheating and altitude; and

(ii) Control of the airship solely by reference to flight instruments.

(6) For free balloons, the appropriate maneuvers and procedures in paragraph (c)(1) of this section.

(d) No student pilot may operate an aircraft in solo cross-country flight, unless—

(1) The instructor is an authorized instructor certificated under this part and the student's certificate has been endorsed by the instructor attesting that the student has received the instruction and demonstrated an acceptable level of competency and proficiency in the maneuvers and procedures of this section for the category of aircraft to be flown; and

(2) The instructor has endorsed the student's logbook—

(i) For each solo cross-country flight, after reviewing the student's preflight planning and preparation, attesting that the student is prepared to make the flight safely under the known circumstances and subject to any conditions listed in the logbook by the instructor; and

(ii) For repeated specific solo cross-country flights that are not greater than 50 nautical miles from the point of departure, after giving that student flight instruction in both directions over the route, including takeoffs and landings at the airports to be used, and has specified the conditions for which the flights can be made.

15. By adding new §§ 61.96, 61.97, 61.98, 61.99, and 61.100 to read as follows:

§ 61.96 Eligibility requirements: Recreational pilots.

To be eligible for a recreational pilot certificate, a person must—

(a) Be at least 17 years of age;

(b) Be able to read, speak, and understand the English language, or have such operating limitations placed on the pilot certificate as are necessary for the safe operation of aircraft, to be removed when the recreational pilot shows the ability to read, speak, and understand the English language;

(c) Hold at least a current third-class medical certificate issued under Part 67 of this chapter;

(d) Pass a written test on the subject areas on which instruction or home study is required by § 61.97;

(e) Pass an oral and flight test on maneuvers and procedures selected by an FAA inspector or designated pilot examiner to determine the applicant's competency in the appropriate flight operations listed in § 61.98; and

(f) Comply with the sections of this part that apply to the rating sought.

§ 61.97 Aeronautical knowledge.

An applicant for a recreational pilot certificate must have logged ground instruction from an authorized instructor, or must present evidence showing satisfactory completion of a course of instruction or home study in at least the following areas of aeronautical knowledge appropriate to the category and class of aircraft for which a rating is sought:

(a) The Federal Aviation Regulations applicable to recreational pilot privileges, limitations, and flight operations, the accident reporting requirements of the National Transportation Safety Board, and the use of the applicable portions of the "Airman's Information Manual" and the FAA advisory circulars;

(b) The use of aeronautical charts for VFR navigation using piloting with the aid of a magnetic compass;

(c) The recognition of critical weather situations from the ground and in flight and the procurement and use of aeronautical weather reports and forecasts;

(d) The safe and efficient operation of aircraft including collision and wake turbulence avoidance;

(e) The effects of density altitude on takeoff and climb performance;

(f) Weight and balance computations; and

(g) Principles of aerodynamics, powerplants, and aircraft systems.

§ 61.98 Flight proficiency.

The applicant for a recreational pilot certificate must have logged instruction from an authorized flight instructor in at least the pilot operations listed in this section. In addition, the applicant's logbook must contain an endorsement by an authorized flight instructor who has found the applicant competent to perform each of those operations safely as a recreational pilot.

(a) *In airplanes.* (1) Preflight operations, including weight and balance determination, line inspection, airplane servicing, powerplant operations, and aircraft systems;

(2) Airport and traffic pattern operations, collision and wake turbulence avoidance;

(3) Flight maneuvering by reference to ground objects;

(4) Pilotage with the aid of magnetic compass;

(5) Flight at critically slow airspeeds, and the recognition of and recovery from imminent and full stalls entered from straight flight and from turns;

(6) Emergency operations, including simulated aircraft and equipment malfunctions;

(7) Maximum performance takeoffs and landings; and

(8) Normal and crosswind takeoffs and landings.

(b) *In helicopters.* (1) Preflight operations including weight and balance determination, line inspection, helicopter servicing, powerplant operations, and aircraft systems;

(2) Airport and traffic pattern operations, collision and wake turbulence avoidance;

(3) Hovering, air taxiing, and maneuvering by reference to ground objects;

(4) Pilotage with the aid of magnetic compass;

(5) High altitude takeoffs and roll-on landings, and rapid decelerations; and

(6) Emergency operations, including auto-rotative descents.

(c) *In gyroplanes.* (1) Preflight operations including weight and balance determination, line inspection, gyroplane servicing, powerplant operations, and aircraft systems;

(2) Airport and traffic pattern operations, collision and wake turbulence avoidance;

(3) Flight maneuvering by reference to ground objects;

(4) Pilotage with the aid of a magnetic compass;

(5) Maneuvering at critically slow air speeds, and the recognition of and recovery from high rates of descent at low airspeeds; and

(6) Emergency procedures, including maximum performance takeoffs and landings.

§ 61.99 Airplane rating: Aeronautical experience.

(a) An applicant for a recreational pilot certificate with an airplane rating must have had at least a total of 30 hours of flight instruction and solo flight time which must include the following:

(1) Fifteen hours of flight instruction from an authorized flight instructor, including at least—

(i) Except as provided for in paragraph (b), 2 hours outside of the vicinity of the airport at which instruction is given, including at least three landings at another airport that is located more than 25 nautical miles from the airport of departure; and

(ii) Two hours in airplanes in preparation for the recreational pilot flight test within the 60-day period before the test.

(2) Fifteen hours of solo flight time in airplanes.

(b) Pilots based on small islands.

(1) An applicant who is located on an island from which the flight required in § 61.99(a)(1)(i) cannot be accomplished without flying over water more than 10 nautical miles from the nearest shoreline need not comply with § 61.99(a)(1)(i). However, if other airports that permit civil operations are available to which a flight may be made without flying over water more than 10 nautical miles from the nearest shoreline, the applicant must show completion of a dual flight between those two airports which must include three landings at the other airport.

(2) The pilot certificate issued to a person under paragraph (b)(1) of this section contains an endorsement with the following limitation which may subsequently be amended to include another island if the applicant complies with paragraph (b)(1) of this section with respect to that island:

Passenger carrying prohibited in flights more than 10 nautical miles from (appropriate island).

(3) The holder of a recreational pilot certificate with an endorsement described in paragraph (b)(2) of this section is entitled to removal of the endorsement if the holder presents satisfactory evidence of compliance with the applicable flight requirements of § 61.93(c) to an FAA inspector or designated pilot examiner.

§ 61.100 Rotorcraft rating: Aeronautical experience.

An applicant for a recreational pilot certificate with a rotorcraft category rating must have a least the following aeronautical experience:

(a) For a helicopter rating, an applicant must have a minimum of 30 hours of flight instruction and solo flight time in aircraft, which must include the following:

(1) Fifteen hours of flight instruction from an authorized flight instructor including at least—

(i) Two hours of flight instruction in helicopters from an authorized flight instructor outside the vicinity of the airport at which instruction is given, including at least three landings at another airport that is located more than 25 nautical miles from the airport of departure; and

(ii) Two hours of flight instruction in preparation for the flight test within the 60-day period preceding the test.

(2) Fifteen hours of solo time in helicopters including—

(i) A takeoff and landing at an airport that serves both airplanes and helicopters; and

(ii) A flight with a landing at a point other than an airport.

(b) For a gyroplane rating, an applicant must have a minimum of 30 hours of flight instruction and solo flight time in aircraft, which must include the following:

(1) Fifteen hours of flight instruction from an authorized flight instructor including at least—

(i) Two hours of flight instruction in gyroplanes from an authorized flight instructor outside the vicinity of the airport at which instruction is given, including at least three landings at another airport that is located more than 25 nautical miles from the airport of departure; and

(ii) Two hours of flight instruction in preparation for the flight test within the 60-day period preceding the test.

(2) Ten hours of solo flight time in a gyroplane, including flights with takeoffs and landings at paved and unpaved airports.

§ 61.102 [Redesignated from § 61.101]

16. By redesignating § 61.101 under Subpart D—Private Pilots as § 61.102 under Subpart D—Private Pilots.

17. By adding new § 61.101 under Subpart C—Student and Recreational Pilots to read as follows:

§ 61.101 Recreational pilot privileges and limitations.

(a) A recreational pilot may—

(1) Carry not more than one passenger; and

(2) Share the operating expenses of the flight with the passenger.

(3) Act as pilot-in-command of an aircraft only when—

(i) The flight is within 50 nautical miles of an airport at which the pilot has received ground and flight instruction from an authorized instructor certificated under this part;

(ii) The flight lands at an airport within 50 nautical miles of the departure airport; and

(iii) The pilot carries, in that pilot's personal possession, a logbook that has been endorsed by the instructor attesting to the instruction required by paragraph (a)(3)(i) of this section.

(b) Except as provided in paragraphs (f) and (g) of this section, a recreational pilot may not act as pilot-in-command of an aircraft—

(1) That is certificated—

(i) For more than four occupants;

(ii) With more than one powerplant;

(iii) With a powerplant of more than 180 horsepower; or

(iv) With retractable landing gear.

(2) That is classified as a glider, airship, or balloon;

(3) That is carrying a passenger or property for compensation or hire;

(4) For compensation or hire;

(5) In furtherance of a business;

(6) Between sunset and sunrise;

(7) In airspace in which communication with air traffic control is required;

(8) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(9) When the flight or surface visibility is less than 3 statute miles;

(10) Without visual reference to the surface;

(11) On a flight outside the United States;

(12) To demonstrate that aircraft in flight to a prospective buyer;

(13) That is used in a passenger-carrying airlift and sponsored by a charitable organization; and

(14) That is towing any object.

(c) A recreational pilot may not act as a required pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or the regulations under which the flight is conducted, except when receiving flight instruction from an authorized flight instructor on board an airship and no person other than a required flight crewmember is carried on the aircraft.

(d) A recreational pilot who has logged fewer than 400 flight hours and who has not logged pilot-in-command time in an aircraft within the preceding 180 days may not act as pilot-in-command of an aircraft until the pilot has received flight instruction from an authorized flight instructor who certifies in the pilot's logbook that the pilot is competent to act as pilot-in-command of the aircraft. This requirement can be met in combination with the requirements of §§ 61.56 and 61.57 at the discretion of the instructor.

(e) The recreational pilot certificate issued under this subpart carries the notation "Holder does not meet ICAO requirements."

(f) For the purpose of obtaining additional certificates or ratings, while under the supervision of an authorized flight instructor, a recreational pilot may fly as sole occupant of an aircraft—

(1) For which the pilot does not hold an appropriate category or class rating;

(2) Within airspace that requires communication with air traffic control; or

(3) Between sunset and sunrise, provided the flight or surface visibility is at least 5 statute miles.

(g) In order to fly solo as provided in paragraph (f) of this section, the recreational pilot must meet the appropriate aeronautical knowledge and flight training requirements of § 61.87 for that aircraft. When operating an aircraft under the conditions specified in paragraph (f) of this section, the recreational pilot shall carry the logbook that has been endorsed for each flight by an authorized pilot instructor who—

(1) Has given the recreational pilot instruction in the make and model of aircraft in which the solo flight is to be made;

(2) Has found that the recreational pilot has met the applicable requirements of § 61.87; and

(3) Has found that the recreational pilot is competent to make solo flights in accordance with the logbook endorsement.

(h) Notwithstanding paragraph 61.101(a)(3), a recreational pilot may, for the purpose of obtaining an additional certificate or rating, while under the supervision of an authorized flight instructor, act as pilot-in-command of an aircraft on a flight in excess of 50 nautical miles from an airport at which flight instruction is received if the pilot meets the flight training requirements of § 61.93 and in that pilot's personal possession is the logbook that has been endorsed by an authorized instructor attesting that:

(1) The recreational pilot has received instruction in solo cross-country flight and the training described in § 61.93 applicable to the aircraft to be operated, and is competent to make solo cross-country flights in the make and model of aircraft to be flown; and

(2) The instructor has reviewed the student's preflight planning and preparation for the specific solo cross-country flight and that the recreational pilot is prepared to make the flight safely under the known circumstances and subject to any conditions listed in the logbook by the instructor.

18. By amending § 61.193 by revising paragraph (a)(5); by adding new paragraphs (a)(6) and (a)(7); by amending paragraph (b)(1) by changing "§ 61.87(d)(1)" to "§ 61.87(b) and (k)" and by changing "§ 61.93(c)(1)" to "§ 61.93(d)"; by amending paragraph (b)(2) by changing "§ 61.87(d)(1)" to "§ 61.87(k)"; by amending paragraph (b)(3) by changing "§ 61.93(c)(2)" to "§§ 61.93(d) and 61.101(h)" and by inserting the words "or recreational pilot" after the words "student pilot"; by redesignating and revising paragraph (b)(6) as paragraph (b)(7); and by adding new paragraphs (b)(6) and (b)(8) to read as follows:

§ 61.193 Flight instructor authorizations.

(a) * * *

(5) The flight review required in § 61.56;

(6) The instrument competency check required in § 61.57(e)(2); and

(7) The pilot-in-command requirements in § 61.101(d).

(b) * * *

(6) In accordance with §§ 61.57(e)(2) and 61.101(d), the logbook of a pilot the CFI has instructed authorizing the pilot to act as pilot-in-command.

(7) In accordance with § 61.187, the logbook of an applicant for a flight instructor certificate certifying that the CFI has examined the applicant and found the applicant competent to pass the practical test required by this part; and

(8) In accordance with § 61.101(g) and (h), the logbook of a recreational pilot the CFI has instructed authorizing solo flight.

* * * * *

19. By amending § 61.195 by adding a new paragraph (g) to read as follows:

§ 61.195 Flight instructor limitations.

* * * * *

(g) *Recreational pilot endorsements.* The flight instructor may not endorse a recreational pilot's logbook unless the instructor has given that pilot the ground and flight instruction required under this part for the endorsement and found that pilot competent to pilot the aircraft safely.

Issued in Washington, DC, on March 24, 1989.

Robert E. Whittington,

Acting Administrator.

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 117 / Pub. L. 101-4

To proclaim March 20, 1989, as "National Agriculture Day". (Mar. 23, 1989; 103 Stat. 6; 1 page) Price: $1.00

H.J. Res. 167 / Pub. L. 101-5

To designate March 16, 1989, as "Freedom of Information Day". (Mar. 23, 1989; 103 Stat. 7; 1 page) Price: $1.00

H.J. Res. 148 / Pub. L. 101-6

Designating the month of March in both 1989 and 1990 as "Women's History Month". (Mar. 24, 1989; 103 Stat. 8; 1 page) Price: $1.00